

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:

PETITION OF NPCR, INC., )  
D/B/A NEXTEL PARTNERS FOR )  
DESIGNATION AS AN ELIGIBLE )  
TELECOMMUNICATIONS CARRIER IN )  
THE COMMONWEALTH OF KENTUCKY )

CASE NO. 2003-00143

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**NPCR, INC. d/b/a NEXTEL PARTNERS'  
NOTICE OF FILING**

Pursuant to the order entered in this case on April 14, 2004, the petitioner, NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners"), hereby gives notice of pre-filing the attached direct testimony of Scott Peabody and Don Wood.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by U.S. mail on this the 30<sup>th</sup> day of April, 2004, to the following:

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<b>NEXTEL PARTNERS FOR</b>	)	<b>CASE NO. 2003-00143</b>
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<b>TELECOMMUNICATIONS CARRIER</b>	)	
<b>IN THE COMMONWEALTH OF KENTUCKY</b>	)	

**DIRECT TESTIMONY OF SCOTT PEABODY**

**FOR NPCR, INC. d/b/a NEXTEL PARTNERS**

1 **I. INTRODUCTION**

2 **Q: PLEASE STATE YOUR NAME, PLACE OF EMPLOYMENT, POSITION AND BUSINESS**  
3 **ADDRESS.**

4 A: My name is Scott Peabody. I am employed by Nextel Partners, Inc. as a Director in its  
5 Engineering Department. My business address is 4500 Carillon Point, Kirkland, WA  
6 98033.

7 **Q: WHAT ARE YOUR RESPONSIBILITIES WITHIN NEXTEL PARTNERS, INC.?**

8 A: I provide engineering services for Nextel Partners, Inc. and its affiliates and indirect  
9 wholly-owned subsidiaries, including Petitioner NPCR, Inc. (collectively, "Nextel  
10 Partners" or the "Company"). In particular, I have responsibilities relating to spectrum  
11 management as well as various engineering and network matters.

12 I also have responsibility regarding Nextel Partners' compliance with universal service  
13 requirements where the Company has been designated as an eligible telecommunications  
14 carrier ("ETC"). I have provided testimony in support of Nextel Partners' applications for  
15 ETC designation in status in Texas, Idaho, Indiana, and Nebraska.

16 **Q: PLEASE DESCRIBE YOUR WORK EXPERIENCE.**

17 A: I have worked in the telecommunications industry for approximately seven years. I have  
18 performed engineering and operations functions for Nextel Partners and AT&T Wireless.  
19 I have also performed planning, systems development, network operations and  
20 engineering functions for a CLEC venture.

21 **Q: PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

1 A: I obtained a B.S. in Electrical Engineering from the University of Maine, and an MBA  
2 from the University of Washington.

3 **Q: DOES NEXTEL PARTNERS CURRENTLY PROVIDE TELECOMMUNICATIONS SERVICE IN**  
4 **KENTUCKY?**

5 A: Yes. Nextel Partners is a "telecommunications carrier" as defined in Section 153(44) of  
6 the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 153(44). Nextel  
7 Partners operates in accordance with Federal Communications Commission ("FCC")  
8 licenses that cover nearly 100% of the state of Kentucky.<sup>1</sup> Today we provide commercial  
9 mobile radio services ("CMRS") in a large portion of the state, including areas also  
10 served by BellSouth Telecommunications, Inc.; Alltel Communications, Inc.; Lewisport  
11 Telephone Company, d/b/a TDS Telecom; Logan Telephone Cooperative, Inc.; Mountain  
12 Rural Telephone Cooperative Corporation, Inc.; Peoples Rural Telephone Cooperative  
13 Corporation, Inc.; and South Central Rural Telephone Cooperative Corporation, Inc.  
14 NPCR, Inc. is a subsidiary of Nextel Partners, Inc., which is publicly traded company  
15 serving more than 1,000,000 subscribers nationwide under the brand name "Nextel."  
16 Nextel Partners licenses cover the more rural parts of the nation, while Nextel  
17 Communications, Inc. ("Nextel Communications") (a separate publicly traded entity)  
18 provides "Nextel" brand service in urban license areas. Together, Nextel Partners and  
19 Nextel Communications provide service in areas of the United States where  
20 approximately 240 million people live or work.

21 **Q: WHAT IS THE RELATIONSHIP BETWEEN NEXTEL PARTNERS AND NEXTEL**  
22 **COMMUNICATIONS?**

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<sup>1</sup> Nextel Partners is the A, B, and C Block economic area ("EA") licensee in Kentucky, which authorizes the Company to provide CMRS in all counties except Boone, Kenton, Campbell, Gallatin, Grant, Pendleton, and Braken.

1 A: Nextel Communications and Nextel Partners are separately owned and operated public  
2 corporations, both publicly traded on the NASDAQ market, with different boards of  
3 directors and executive officers. Nextel Communications, through a subsidiary, is Nextel  
4 Partners' largest shareholder, owning approximately 31% of Nextel Partners' common  
5 stock.

6 **Q: HOW LONG HAS NEXTEL PARTNERS BEEN OPERATING?**

7 A: Nextel Partners was formed in 1998 to provide service under the "Nextel" brand name in  
8 small and rural markets. We built out our network rapidly, beginning operations in 1999  
9 and launching service in Kentucky in the first quarter of 2000.

10 **Q: TURNING TO THE MATTER OF UNIVERSAL SERVICE, DOES NEXTEL PARTNERS**  
11 **CURRENTLY CONTRIBUTE TO THE FUNDING FOR UNIVERSAL SERVICE?**

12 A: Yes. Federal regulations require CMRS carriers such as Nextel Partners to contribute a  
13 portion of their revenues to the funding of federal universal service, and some states  
14 require Nextel Partners to contribute to the funding of state universal service programs as  
15 well.

16 **Q: IS THE COMPANY PRESENTLY ABLE TO DRAW FROM FEDERAL UNIVERSAL SERVICE**  
17 **FUNDS FOR THE PROVISION OF THE SUPPORTED SERVICES IN KENTUCKY?**

18 A: No. Until it is designated as an eligible telecommunications carrier ("ETC") for those  
19 areas it serves in Kentucky, Nextel Partners is not able to receive any federal universal  
20 service funds to support its provision of universal services to Kentucky consumers.  
21 Unlike urban areas where carriers are able to compete based upon the cost of providing  
22 service, rural high-cost areas will not be able to experience the full benefits of customer  
23 choice unless competitive carriers are designated as ETCs and have access to the support  
24 mechanisms designed to benefit rural consumers.

1   **Q:   HAS THE COMPANY BEEN DESIGNATED AS AN ETC IN ANY OTHER STATES?**

2   A:   Nextel Partners has been designated as an ETC in Indiana, Arkansas, Iowa, Wisconsin  
3       and Mississippi.<sup>2</sup> We have a number of other applications that are currently pending.

4   **Q:   WHAT ARE THE PURPOSES OF YOUR TESTIMONY?**

5   A:   The purposes of my testimony are two-fold: first, I will describe how Nextel Partners  
6       provides the FCC's supported services in Kentucky in the areas identified on **Peabody**  
7       **Exhibit No. 1** (the "Designated Areas"),<sup>3</sup> and further will state the Company's  
8       commitment to include those services in its universal service offerings. Second, I will  
9       explain the "public interest" standard that applies to designating an additional ETC such  
10      as Nextel Partners in areas served by rural telephone companies and demonstrate why  
11      designating Nextel Partners in these areas significantly benefits the public interest.  
12      Because Nextel Partners meets the applicable criteria, and because the public interest of

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<sup>2</sup> *In the Matter of the Designation of Eligible Telecommunications Carriers by the Indiana Utility Regulatory Commission Pursuant to the Telecommunications Act of 1996 and Related FCC Orders, and in Particular, the Application of NPCR, Inc. d/b/a Nextel Partners to be Designated*, Ind. Util. Reg. Comm., Cause No. 41052 ETC 43, Order (Mar. 17, 2004) (**Peabody Exhibit No. 6**); *In the Matter of the Application of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934, as Amended*, Ark. PSC Docket No. 03-141-CL, Order No. 4 (Dec. 22, 2003) (**Peabody Exhibit No. 7**); *In re: NPCR, Inc. d/b/a Nextel Partners*, Iowa Utils. Bd., Docket No. 199 IAC 39.2(4), Order Designating Eligible Carrier (May 15, 2003) (**Peabody Exhibit No. 8**); *Application of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier in Wisconsin*, PSC Docket No. 8081-TI-101, Final Decision (Sept. 30, 2003) ("Nextel Partners Wisconsin Order") (**Peabody Exhibit No. 9**); *Application of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. § 214(e)(2)*, Miss. Pub. Svc. Comm. Docket No. 03-UA-0256, Order (Sept. 29, 2003) (**Peabody Exhibit No. 10**).

<sup>3</sup> **Peabody Exhibit No. 1** reflects the filing of February 13, 2004, in which Nextel Partners withdrew Leslie County Telephone Company from its Petition. **Exhibit No. 1** also removes two BellSouth wire centers – CRTNKYMA, and GHNTKTMA – which are beyond Nextel Partners' license area.

1 Kentucky and its consumers favor designating Nextel Partners an ETC in the specified  
2 rural telephone company study areas, its ETC Petition ("Petition") should be granted.

3 **II. REQUIREMENTS FOR ETC DESIGNATION**

4 **Q: WHEN DID NEXTEL PARTNERS FILE ITS ETC PETITION IN THE STATE OF KENTUCKY?**

5 A: Nextel Partners' ETC Petition was filed with the Kentucky Public Service Commission  
6 (the "Commission") on April 23, 2003.

7 **Q: WHY IS NEXTEL PARTNERS SEEKING DESIGNATION AS AN ETC?**

8 A: Section 214(e) of the Act provides that a common carrier must obtain designation as an  
9 ETC from the Commission to be eligible to receive federal universal service support.

10 **Q: IS A WIRELESS PROVIDER LIKE NEXTEL PARTNERS ELIGIBLE FOR FEDERAL UNIVERSAL**  
11 **SERVICE SUPPORT?**

12 A: Yes. Both the Act and the FCC's decisions establish the directives for the Commission to  
13 follow in making an ETC designation. Section 214(e) specifically provides that any  
14 common carrier, including a wireless provider such as Nextel Partners, may be  
15 designated as an ETC for federal universal service support purposes, provided that carrier  
16 meets the specific criteria set forth in Section 214(e)(1) of the Act. The FCC stated this  
17 very clearly in a 1997 Order:

18 We agree with the Joint Board's analysis and recommendation that any  
19 telecommunications carrier using any technology, including wireless  
20 technology, is eligible to receive universal service support if it meets the  
21 criteria under Section 214(e)(1).<sup>4</sup>

22 Although this Commission has not yet designated a wireless carrier as an ETC, state  
23 commissions and the FCC have designated wireless ETCs in over 20 states, and wireless

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<sup>4</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, FCC 97-157, ¶ 145 (rel. May 7, 1997) ("*Universal Service Order*").

1 carriers are now assisting in the provision of universal services in high cost areas  
2 throughout the nation.<sup>5</sup>

3 **Q: WHAT ARE THE REQUIREMENTS FOR OBTAINING ETC DESIGNATION?**

4 A: The eligibility requirements are set forth in the Act, and are as follows:

5 A common carrier designated as an eligible telecommunications carrier  
6 under paragraph (2) or (3) shall be eligible to receive universal service  
7 support in accordance with section 254 and shall, throughout the service  
8 area for which the designation is received:

9 (A) Offer the services that are supported by Federal universal  
10 service support mechanisms under Section 254(c), either using its  
11 own facilities or a combination of its own facilities and resale of  
12 another carrier's services (including the services offered by another  
13 eligible telecommunications carrier); and

14 (B) Advertise the availability of such services and the charges  
15 therefor using media of general distribution.

16 See 47 U.S.C. § 214(e)(1) (emphasis added). The Commission previously applied these  
17 Section 214(e)(1) factors in designating e-Tel as an ETC in the non-rural exchanges of  
18 BellSouth. See *In the Matter of: e-Tel, LLC For Designation As An Eligible*  
19 *Telecommunications Carrier*, Case No. 2002-00323, Order (Ky. P.S.C. Nov. 26, 2002)  
20 ("*e-Tel Order*"). In areas served by a rural telephone company, the Commission must  
21 also make a "public interest" finding. 47 U.S.C. § 214(e)(2).

22 **Q: IS IT YOUR UNDERSTANDING THAT NEXTEL PARTNERS IS ENTITLED TO BE DESIGNATED**  
23 **AS AN ETC IF IT DEMONSTRATES THAT IT IS CAPABLE OF MEETING ALL OF THE**  
24 **OBLIGATIONS IMPOSED BY SECTION 214(e) OF THE ACT?**

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<sup>5</sup> See, e.g., *RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 02-3181, ¶ 13 (rel. Nov. 27, 2002) ("*RCC Order*"); *Western Wireless Corporation*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 00-2896 (rel. Dec. 26, 2000) ("*Wyoming Order*"), *aff'd*, FCC 01-311 (rel. Oct. 19, 2001).

1 A: Yes. In areas served by a rural telephone company, the Act requires the Commission to  
2 designate Nextel Partners as an ETC if it demonstrates an ability to perform all of the  
3 obligations set forth in 47 U.S.C. § 214(e)(1) and also finds that designating Nextel  
4 Partners as an ETC is in the public interest.

5 **Q: THE FIRST CRITERION FOR ETC DESIGNATION UNDER SECTION 214(e)(1) IS COMMON**  
6 **CARRIER STATUS. IS NEXTEL PARTNERS A COMMON CARRIER?**

7 A: Yes. Nextel Partners is a "common carrier" for purposes of obtaining ETC designation  
8 under 47 U.S.C. § 214(e)(1). A common carrier is generally defined in 47 U.S.C. §  
9 153(10) as "any person engaged as a common carrier for-hire" in interstate or foreign  
10 communications utilizing either wire or radio technology, except for radio broadcasters.  
11 The FCC's regulations specifically provide that a specialized mobile radio service, such  
12 as that provided by Nextel Partners, is a common carrier service regulated as commercial  
13 mobile radio service ("CMRS"). *See* 47 C.F.R. § 20.9(a)(4).

14 **Q: THE SECOND REQUIREMENT IS THAT NEXTEL PARTNERS OFFER THE "SUPPORTED**  
15 **SERVICES." WHAT ARE THE SUPPORTED SERVICES THAT MUST BE OFFERED?**

16 A: The FCC has identified the following services and functionalities as the core services to  
17 be offered by an ETC and supported by federal universal service support mechanisms:

- 18 1. voice-grade access to the public switched network;
- 19 2. local usage;
- 20 3. dual tone multi-frequency ("DTMF") signaling or its functional  
21 equivalent;
- 22 4. single-party service or its functional equivalent;
- 23 5. access to emergency services;
- 24 6. access to operator services;

7. access to interexchange services;
8. access to directory assistance;
9. toll limitation for qualifying low-income consumers

*See* 47 C.F.R. § 54.101(a).

**Q: CAN NEXTEL PARTNERS CURRENTLY PROVIDE THE SUPPORTED SERVICES SET FORTH ABOVE USING ITS NETWORK THAT IS IN PLACE TODAY?**

A: Yes. Nextel's Partners' present network can provide all of these services to consumers in Kentucky. In fact, Nextel Partners *already* provides all of these services in Kentucky, with the exception of the ninth supported service, "toll limitation for qualifying low-income consumers." As I will explain below, the "toll limitation" service is a service linked to the federal "Lifeline" program targeted at meeting the needs of low-income consumers. Nextel Partners does offer toll blocking service today in other states where it has received ETC designation, but cannot participate in the federal Lifeline program in Kentucky until it receives its ETC designation.

**Q: COULD YOU EXPLAIN EACH OF THE SUPPORTED SERVICES AND HOW NEXTEL PARTNERS PROVIDES, OR WILL PROVIDE THESE SERVICES?**

A: Yes. With the sole exception of "toll limitation for qualifying low income consumers," as discussed below, Nextel Partners *presently* provides each of the supported services identified by the FCC in 47 C.F.R. § 54.101(a) as follows:

a. Voice-grade access to the public switched telephone network means the ability to make and receive phone calls, within the 300 to 3000 Hertz frequency range. 47 C.F.R. § 54.101(a)(1). Through its interconnection arrangements with local telephone companies all Kentucky customers of Nextel Partners are able to make and receive calls on the public switched network within the FCC's specified bandwidth.

1           b.     Local usage. An ETC must include an amount of local usage determined  
2 by the FCC as part of a universal service offering. 47 C.F.R. § 54.101(a)(2). To date, the  
3 FCC has specifically decided not to require unlimited local usage, and has not set a  
4 minimum amount of local usage required to be included in a universal service offering.  
5 *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45,  
6 Order and Order on Reconsideration, FCC 03-170, ¶ 14 (rel. July 14, 2003). Nextel  
7 Partners will meet the local usage requirement by providing local usage in each universal  
8 service offering.

9           c.     DTMF signaling, or its functional equivalent. DTMF is a method of  
10 signaling that facilitates the transportation of call set-up and call detail information. 47  
11 C.F.R. § 54.101(a)(3). Nextel Partners currently uses out-of-band digital signaling and  
12 in-band multi-frequency ("MF") signaling that is functionally equivalent to DTMF  
13 signaling

14           d.     Single-party service or its functional equivalent. "Single-party service"  
15 means that only one party will be served by a subscriber loop or access line, in contrast to  
16 a multi-party line. 47 C.F.R. § 54.101(d). *In the Matter of Federal-State Joint Board on*  
17 *Universal Service*, CC Docket 96-45, Report and Order, FCC 97-157, ¶ 162 (rel. May 7,  
18 1997) ("*Universal Service Order*"). Nextel Partners provides the functional equivalent of  
19 single-party service – a dedicated message path for the length of all customer calls. 47  
20 C.F.R. § 54.101(a)(4).

21           e.     Access to emergency services. The ability to reach a public emergency  
22 service provider by dialing 911 is a required service in any universal service offering.

1 Enhanced 911 or "E911," which includes the capability of providing both automatic  
2 numbering information ("ANI") and automatic location information ("ALI"), is only  
3 required if a public safety answering point ("PSAP") makes arrangements with the local  
4 provider for the delivery of such information. 47 C.F.R. § 54.101(a)(5). Nextel Partners  
5 provides universal access to the 911 system for its customers, and has implemented and  
6 will continue to implement E911 services consistent with the FCC's Rules and Orders and  
7 local PSAP requests. Nextel Partners has launched 34 counties in Kentucky at Phase I  
8 E911, and 8 counties at Phase II E911. Three requests are pending for Phase I E911  
9 service.

10 f. Access to operator services. Access to operator services is defined as any  
11 automatic or live assistance provided to a consumer to arrange for the billing or  
12 completion, or both, of a telephone call. 47 C.F.R. § 54.101(a)(6). Nextel Partners meets  
13 this requirement by providing all of its customers with access to operator services  
14 provided by either the Company or other entities (*e.g.* LECs, IXC, etc.).

15 g. Access to interexchange service. A universal service provider must offer  
16 consumers access to interexchange service to make and receive interexchange calls.  
17 Nextel Partners presently meets this requirement by providing all of its customers with  
18 the ability to make and receive interexchange or toll calls through direct interconnection  
19 arrangements the Company has with one or more interexchange carriers (IXCs).

20 h. Access to directory assistance means the ability to place a call directly to  
21 directory assistance. 47 C.F.R. § 54.101(a)(8). Nextel Partners meets this requirement  
22 by providing all of its customers with access to directory assistance by dialing "411."

1           i.     Toll limitation for qualifying low-income consumers.     FCC Rule  
2     54.101(a)(9) requires the provision of "toll limitation" to requesting Lifeline customers,  
3     and defines toll limitation with reference to the FCC's Lifeline Rules.     Lifeline Rule  
4     54.400(d) defines "toll limitation" as either "toll blocking" or "toll control" if a carrier is  
5     incapable of providing both, but as both "toll blocking" and "toll control" if a carrier can  
6     provide both.     Toll blocking allows consumers to elect not to allow the completion of  
7     outgoing toll calls.     Toll control allows consumers to specify a certain amount of toll  
8     usage that may be incurred per month or per billing cycle.     47 C.F.R. § 54.500(b)-(c).  
9     Nextel Partners is not, at this time, capable of providing toll control.     To comply with this  
10    rule, Nextel Partners will provide toll blocking to requesting Lifeline customers.

11   **Q:     IS NEXTEL PARTNERS REQUIRED TO OFFER TOLL BLOCKING TO QUALIFYING LOW-**  
12   **INCOME CONSUMERS PRIOR TO ITS DESIGNATION AS AN ETC?**

13   **A:**    No, not prior to its designation.     The toll-blocking offering is part of a carrier's obligation  
14    to offer supported services *after* designation as an ETC; it is part of the federal Lifeline  
15    program, and only ETCs can participate in Lifeline.     *See* 47 C.F.R. §§ 54.400 *et seq.*     The  
16    reference to "qualifying" low income consumers means that the consumers being offered  
17    toll blocking have first demonstrated their eligibility for Lifeline assistance by showing  
18    either that they qualify under pertinent state-imposed guidelines, or where no such  
19    guidelines exist, that they receive certain other types of federal financial assistance, such  
20    as Medicaid, food stamps, Supplemental Security Income, federal public housing  
21    assistance, or Low-Income Home Energy Assistance Program assistance.     47 C.F.R. §  
22    54.409.     Nextel Partners presently offers toll blocking to Lifeline customers in states

1 where it has been designated as an ETC, and will offer toll blocking to eligible Lifeline  
2 support recipients in Kentucky.

3 **Q: WILL NEXTEL PARTNERS PROVIDE UNIVERSAL SERVICES ONCE DESIGNATED?**

4 **A:** Yes. All of Nextel Partners' voice offerings contain the FCC's supported services.  
5 Attached as **Peabody Exhibit No. 2** are Nextel Partners' service plans available today  
6 through [www.Nextel.com](http://www.Nextel.com) and 800-NEXTEL9, and our standard customer service  
7 agreement.<sup>6</sup> Nextel Partners' universal service offerings will be provided to consumers  
8 using the same phones, antennae, cell sites, towers, trunk lines, mobile switching center,  
9 and interconnection facilities used today.

10 **Peabody Exhibit No. 3(a) through Exhibit No. 3(h)** depict our current coverage with the  
11 non-rural telephone company wire centers overlayed on top. Specifically, **Peabody**  
12 **Exhibit No. 3(a)** though **Exhibit No. 3(d)** show the BellSouth wire centers, **Peabody**  
13 **Exhibit No. 3(e) through Exhibit No. 3(g)** show the Alltel – Lexington wire centers, and  
14 **Peabody Exhibit No. 3(h)** shows the Alltel – London wire centers within which we seek  
15 ETC designation, all as set forth in **Peabody Exhibit No. 1**. **Peabody Exhibit No. 4**  
16 shows our current coverage overlayed on the rural telephone company study areas set  
17 forth in **Peabody Exhibit No. 1**.

18 Nextel Partners also regularly deploys additional cell sites and channels, as necessary, to  
19 maximize signal coverage and service availability. The maps in **Peabody Exhibit Nos. 3**  
20 and **4** depict a propagation analysis employing Nextel Partners' existing facilities, and

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<sup>6</sup> The local calling area for these plans is the state of Kentucky. Other rate plans may be available through other distribution channels. All rate plans that include the supported services would qualify for universal service funding.

1 assuming a three-watt wireless phone. The extent of Nextel Partners' existing coverage  
2 in and around Kentucky does show Nextel Partners' significant investment in facilities for  
3 its Kentucky customers, and its commitment to serving their mobile communications  
4 needs.

5 **Q: IS NEXTEL PARTNERS REQUIRED TO DEMONSTRATE THAT IT CAN SERVE EVERY**  
6 **CUSTOMER IN ITS PROPOSED SERVICE AREA PRIOR TO DESIGNATION AS AN ETC IN**  
7 **KENTUCKY?**

8 A: No. As established by the FCC, applicable law does not require Nextel Partners to show  
9 that it can serve every customer throughout each study area for which it seeks designation  
10 in advance of receiving a grant of ETC status. *In the Matter of Federal-State Joint Board*  
11 *on Universal Service Western Wireless Corporation Petition for Preemption of an Order*  
12 *of the South Dakota Public Utilities Commission, Declaratory Ruling, CC Docket 96-45,*  
13 *FCC 00-248, 15 FCC Rcd at 15175 (rel. August 10, 2000) ("Declaratory Ruling").* What  
14 the law does require is that, once Nextel Partners is designated an ETC, Nextel Partners  
15 respond to a "reasonable request for service" throughout each of the areas for which it  
16 seeks designation. *Id.* As is clear from the Kentucky coverage map, Nextel Partners is  
17 well-equipped to respond to "reasonable requests for service" throughout the rural  
18 telephone company study areas for which it seeks designation in Kentucky, and Nextel  
19 Partners will meet all of its legal obligations.

20 **Q: A THIRD REQUIREMENT FOR DESIGNATION AS AN ETC IS TO ADVERTISE THE**  
21 **AVAILABILITY OF THE SUPPORTED SERVICES. HOW DOES NEXTEL PARTNERS INTEND**  
22 **TO ADVERTISE THE AVAILABILITY OF THE SUPPORTED SERVICES?**

23 A: Based upon the recommendations of the Joint Board, the FCC has not adopted particular  
24 standards regarding advertising using media of general distribution under Section  
25 214(e)(1). *See Universal Service Order, ¶ 148.* Nextel Partners will advertise the

1       availability of the supported services and the corresponding charges in a manner that  
2       fully informs the general public within the designated service areas of such services and  
3       charges. The Nextel brand is currently advertised jointly by Nextel Partners and Nextel  
4       Communications through several different media, including newspaper, television, radio,  
5       and billboard advertising. This collaborative advertising is designed to increase  
6       awareness of the "Nextel" brand name, service offerings and unique services offered by  
7       each company. Nextel Partners' nationwide advertising costs totaled approximately  
8       \$28.2 million for the year ending December 31, 2002. In Kentucky, Nextel Partners  
9       collaboratively advertises with Nextel Communications through media of general  
10      distribution, including newspaper, magazine, billboard and yellow page advertisements,  
11      as well as radio and television ads. Advertising expenditures targeted to Kentucky  
12      residents, not including national marketing efforts that also reach those residents, total  
13      over \$1.2 million.

14      In addition, Nextel Partners advertises through point-of-sale marketing efforts at various  
15      wireless-telecommunications and general-electronic retail stores and over the Internet at  
16      www.Nextel.com. Nextel Partners also maintains various retail store locations  
17      throughout its authorized service areas, which provide an additional source of  
18      advertising. Nextel Partners will use the same media of general distribution that it  
19      currently employs to advertise its universal service offerings throughout the service areas.  
20      Attached as **Peabody Exhibit No. 5** contains Nextel Partners' general plan regarding  
21      advertising for Kentucky.

22   **Q:   IN WHAT SERVICE AREAS IS NEXTEL PARTNERS SEEKING DESIGNATION AS AN ETC?**

1 A: The FCC defines the term "service area" as a geographic area established by a state  
2 commission for the purpose of determining universal service obligations and support  
3 mechanisms. *See* 47 C.F.R. § 54.207(a). In those areas served by a rural telephone  
4 company, service area means the company's study area unless the state commission and  
5 the FCC establish a different service area requirement after taking into account  
6 recommendations of the Joint Board. *See* 47 C.F.R. § 54.207(b). Pursuant to 47 U.S.C. §  
7 214(e)(1), Nextel Partners requests designation as an ETC in the areas within **Peabody**  
8 **Exhibit No. 1**. These Designated Areas consist of BellSouth and Alltel wire centers and  
9 rural telephone company study areas.

10 **Q: NEXTEL PARTNERS PETITION IDENTIFIED VERIZON WIRE CENTERS, WHICH NOW ARE**  
11 **IDENTIFIED AS ALLTEL'S SERVICE TERRITORY. CAN YOU EXPLAIN THAT CHANGE?**

12 A: As I understand it, Verizon's Kentucky properties have recently been sold to Alltel. We  
13 also understand that these wire centers would, for universal service purposes, keep their  
14 "non-rural" status. As a result, the Commission can designate Nextel Partners in the  
15 former Verizon wire centers included in the Petition. **Peabody Exhibit No. 1** identifies  
16 those wire centers and associates them with the new Alltel study area code to which they  
17 are assigned.

18 **Q: CAN NEXTEL PARTNERS SERVE THE ENTIRE STUDY AREA OF EACH RURAL TELEPHONE**  
19 **COMPANY CURRENTLY SERVING AREAS FOR WHICH NEXTEL PARTNERS SEEKS ETC**  
20 **DESIGNATION?**

21 A: Yes, Nextel Partners seeks designation for the entire study area for each affected rural  
22 telephone company.

23 **Q: HAVE THE CORE REQUIREMENTS FOR DESIGNATING A CARRIER AS AN ETC CHANGED**  
24 **SINCE THE FCC ISSUED ITS *VIRGINIA CELLULAR* DECISION?**

1 A: No, the FCC did not change the substantive analysis in *Virginia Cellular, LLC Petition*  
2 *for Designation as an Eligible Telecommunications Carrier In the Commonwealth of*  
3 *Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, FCC 03-338 (rel.  
4 Jan. 22, 2004) ("*Virginia Cellular*"). In fact, the FCC has reaffirmed its policy of  
5 recognizing that wireless carriers meet the requirements for ETC designation and  
6 competitive ETC designations serve the public interest. The FCC also looked favorably  
7 on certain characteristics and commitments of that carrier which apply equally in this  
8 case.

9 **Q: PLEASE EXPLAIN WHAT HAPPENED IN VIRGINIA CELLULAR.**

10 In *Virginia Cellular*, the FCC recognized that the designation of a wireless competitive  
11 ETC in rural areas serves the public interest and furthers the goals of universal service by  
12 providing, among other things, greater mobility, a choice of providers, and the benefits of  
13 larger local calling areas. *Virginia Cellular*, ¶¶ 12, 29. In addition, the FCC specifically  
14 recognized that greater access to mobile emergency services "can mitigate the unique  
15 risks of geographic isolation associated with living in rural communities." *Id.*, ¶ 29.

16 The FCC further considered voluntary commitments Virginia Cellular made regarding  
17 customer service, reporting, and extension of facilities. The FCC embraced these  
18 commitments as consistent with the public interest, and recognized that these  
19 commitments alleviated certain concerns raised by opponents of ETC designations.  
20 Nextel Partners will make comparable commitments set forth below, which further  
21 demonstrate the public interest benefits associated with granting Nextel Partners'  
22 Application in the state of Kentucky.

1   **Q:    WHAT SPECIFICALLY ARE THESE CONDITIONS?**

2   A:    The first commitment made by Virginia Cellular was adopting the Cellular  
3       Telecommunications and Internet Association ("CTIA") Consumer Code for Wireless  
4       Service. The wireless industry is a competitive industry, where market forces have been  
5       allowed to shape customer service. The FCC recognized, however, that the CTIA  
6       Consumer Code for Wireless Service contains important customer protections, and that  
7       the adoption of those standards evidences a wireless ETC's commitment to customer  
8       service and service quality consistent with the public interest. *Id.*, ¶ 30. Nextel Partners  
9       will adopt the CTIA Consumer Code where it is designated as an ETC, and suggests that  
10      the Commission incorporate this commitment into a designation order. The Company  
11      hopes that its formal adoption of and compliance with these principles will allow Nextel  
12      Partners to build on its industry-leading reputation for customer satisfaction and  
13      retention.

14   **Q:    WHAT ELSE DID THE FCC RELY ON?**

15   A:    The FCC also determined in *Virginia Cellular* that the public interest was served by  
16      further efforts to collect service quality data from competitive ETCs. *Id.*, ¶ 30. Nextel  
17      Partners likewise commits to providing the Commission, on an annual basis, with the  
18      number of consumer complaints per 1,000 handsets. *Id.* The company will also provide  
19      the Commission with a point of contact within the Company to contact to address any  
20      customer service or service quality complaint received by the Commission. That contact  
21      person will have access to customer account information and the authority to resolve

1 customer service issues. This commitment will help Nextel Partners build on its  
2 reputation for leading the industry in consumer satisfaction.

3 **Q: DID THE FCC NOTE ANY OTHER COMMITMENTS?**

4 A: The FCC also highlighted in *Virginia Cellular* the carrier's commitment to providing  
5 service to new customers. *Id.*, ¶ 15. To ensure that Nextel Partners meets its ETC  
6 obligation to respond to reasonable requests for service, the Company will implement the  
7 following steps, which were presented by Virginia Cellular and embraced by the FCC:

- 8 1) If a request comes from a customer within its existing network, Nextel  
9 Partners will provide service immediately using customer equipment  
10 selected by the customer. In practice, if Nextel Partners receives an  
11 Internet or phone order prior to 4:00 p.m., the phone is delivered by  
12 overnight mail the following morning.
- 13 2) If a customer cannot be served by existing network facilities, Nextel  
14 Partners will allow the customer to make a written request for service in a  
15 specific location. In response, Nextel Partners will take a series of steps to  
16 provide service.
  - 17 • First, Nextel Partners will determine whether the customer's  
18 equipment can be modified or replaced to provide service in a  
19 desired location.
  - 20 • Second, it will determine whether the customer could be provided  
21 with other network equipment (booster, antenna, or 3 watt unit) to  
22 provide service in the requested location.
  - 23 • Third, Nextel Partners will determine whether adjustments at the  
24 nearest cell site can be made to provide service.
  - 25 • Fourth, Nextel Partners will determine whether there are any other  
26 adjustments to either the network or the customer facilities that can  
27 be made to provide service.
  - 28 • Fifth, Nextel Partners will explore the possibility of offering resold  
29 service of carriers that have facilities available to provide service  
30 in that location.

- Sixth, Nextel Partners will determine whether additional network infrastructure (additional cell site, extender or repeater) could be constructed to provide service, and evaluate the costs and benefits of using high-cost universal service support to serve a number of customers requesting service.

If, after these steps, the customer cannot be served, Nextel Partners will notify the customer and provide the Commission with an annual report of how many requests for service could not be filled. The Commission would retain jurisdiction and authority to consider whether Nextel Partners has responded appropriately to a request for service as required by an ETC.

Nextel Partners believes that the formalization of this process will benefit consumers and give the Commission more confidence that Nextel Partners will meet its obligations to provide service "upon reasonable request" as an ETC.

**Q: WHAT OTHER CONDITIONS DID THE FCC FIND RELEVANT?**

A: The FCC recognized that a commitment to reporting build-out progress would provide important information that could be used to evaluate an ETC's progress towards meeting its obligation to provide service throughout a service area. *Virginia Cellular*, ¶ 30. Nextel Partners will submit information to the Commission on an annual basis detailing its progress towards meeting its build-out plans in the service areas where it has been designated as an ETC. Nextel Partners readily accepts the incorporation of these standards into an order approving Nextel Partners' Petition.

**Q: HOW DO THESE COMMITMENTS RELATE TO THE "PUBLIC INTEREST" STANDARD IN SECTION 241(E)(2) OF THE ACT?**

A: Based on these commitments, the FCC found that designating a wireless carriers as a competitive ETC to serve the public interest. We believe that by accepting these we have

1 demonstrated public interest benefits that support an approval of Nextel Partners'  
2 Petition.

3 **Q: DOES THE PUBLIC INTEREST STANDARD ALSO RECOGNIZE THE BENEFITS OF**  
4 **COMPETITIVE UNIVERSAL SERVICE PROVIDERS IN HIGH-COST AREAS?**

5 A: Absolutely. An important purpose of the Act was to promote competition in local  
6 telephone markets. Consistent with the Act, the "public interest" is served where  
7 designating a competitive ETC will benefit consumers in rural areas of the state.  
8 Congress and the FCC have established a presumption that competition benefits  
9 consumers, and recognized a policy that citizens throughout the state are entitled to the  
10 benefits of competitive universal service. This is fully consistent with the states purposes  
11 of the Act:

12 To promote competition and reduce regulation in order to secure lower  
13 prices and higher quality services for American telecommunications  
14 consumers and encourage the rapid deployment of new  
15 telecommunications technologies.

16 Pub. L. No. 104-104, 110 Stat. 56 (1996) (emphasis added). This Commission  
17 acknowledged and accepted these clear federal principles in the *e-Tel Order* when it  
18 noted: "[T]his designation will benefit consumers in Kentucky by expanding the range of  
19 competitive choices and providing an incentive for incumbent telephone companies to  
20 improve their existing networks." *e-Tel Order*, p. 2.

21 **Q: WHY IS COMPETITION IMPORTANT IN RURAL AREAS?**

22 A: The Act promised competitive telecommunications markets in all areas of the nation, not  
23 just in urban areas. Yet, competitive service providers are hard to find in rural areas. In  
24 addition, rural telephone companies have been quite successful in expanding their  
25 services provided and deploying advanced network infrastructure. Many rural telephone

1 companies now provide local service, long distance, cable, wireless, internet, and/or DSL  
2 services, and do so without any competition from other landline providers. It is entirely  
3 possible in some rural areas that the residents get all of their telecommunications-related  
4 services from a single incumbent provider, not because they prefer to do so, but because  
5 it is their only choice. Wireless companies, especially a company like Nextel Partners  
6 that serves rural areas, represent the only real chance at bringing meaningful competition  
7 to these service areas. That can only happen if Nextel Partners is able to compete on a  
8 level playing field.

9 **Q: HOW DOES DESIGNATING AN ADDITIONAL ETC PROVIDE FOR COMPETITIVE BENEFITS?**

10 **A:** Granting ETC status to Nextel Partners will, for the first time, allow rural consumers a  
11 choice of ETCs for their telecommunications needs. By designating Nextel Partners, the  
12 Commission will allow consumers to choose basic service by determining which carrier  
13 provides the most advantageous pricing, services, service quality, customer service and  
14 service availability. Increased competition will also create incentives for the rural LECs  
15 to improve their respective networks, operate more efficiently and improve customer  
16 service, all of which benefits consumers and promotes universal service.

17 In the long run, a fully competitive market will give customers more choice, so that  
18 consumers become the ultimate arbiters of the products and services that succeed in the  
19 market. When customers have a real choice of providers, all carriers must cut costs,  
20 innovate and provide better service. The Commission should facilitate competition in  
21 rural areas so that in the long run, rural consumers are provided the benefits of fully  
22 competitive markets.

1 **Q: BUT ISN'T COMPETITION IN RURAL MARKETS INCONSISTENT WITH UNIVERSAL**  
2 **SERVICE?**

3 A: To the contrary, competition drives universal service. As explained above, the goal of  
4 the Act, of which universal service is a part, is the promotion of competition. Indeed, the  
5 FCC has expressly rejected arguments that competition somehow takes a back seat the  
6 advancement of universal service:

7           Commentors who express concern about the principle of competitive  
8           neutrality contend that Congress recognized that, in certain rural areas,  
9           competition may not always serve the public interest and that promoting  
10           competition in these areas must be considered, if at all, secondary to the  
11           advancement of universal service. We believe these commentors present a  
12           false choice between competition and universal service.

13           *Universal Service Order*, ¶ 50 (emphasis added).

14 **Q: CAN YOU SPECIFY THE BENEFITS EXPECTED FROM NEXTEL PARTNERS' DESIGNATION**  
15 **AS AN ETC?**

16 A: Access to universal service funding will allow Nextel Partners to continue to extend its  
17 network throughout the state, and this network infrastructure will continue to be available  
18 to provide universal and advanced services to rural consumers in Kentucky. Nextel  
19 Partners' network uses a packet-based platform, the integrated Digital Enhanced Network  
20 (iDEN™) technology, developed by Motorola. This all-digital technology provides  
21 exceptional sound and transmission quality, using state-of-the-art methods capable of  
22 delivering Digital Cellular, Direct ConnectSM Service PUSH TO TALK® (walkie-talkie  
23 service), Mobile Messaging, and Internet access. We also provide GPS location  
24 assistance for customers dialing 911 where requested by a PSAP. As we continue to  
25 expand our network in Kentucky this network infrastructure will be available to provide  
26 basic and enhanced services to its residents.

1 We are confident that Nextel Partners will provide valuable universal services to  
2 residents in Kentucky. We offer a wide range of calling plans, and continually seek to  
3 adjust our service plans based on customer preferences. Because we offer mobile  
4 services, we provide service that is much more "universal" than our landline counterparts.  
5 It is essential for the Commission to realize that the principle distinction between Nextel  
6 Partners and the incumbent landline rural telephone company – mobility – is even  
7 essential to residents in rural areas, where there may be many miles between landline  
8 phones. Especially in emergencies, this distinction can be of the utmost importance. As  
9 discussed above, Nextel Partners will continue to extend its network infrastructure for the  
10 benefit of consumers in Kentucky.

11 **Q: WHAT CONSUMER CHOICES ARE PROVIDED BY NEXTEL PARTNERS THAT ARE NOT**  
12 **OFFERED BY ILECS?**

13 **A:** Most obviously, we provide the benefits of mobility. We offer larger local calling areas  
14 to our customers, and in some offerings, provide nationwide calling. We offer our Direct  
15 Connect service that cannot be provided by any ILEC. We offer mobile wireless data  
16 services, including access to the Internet, email, and text messaging. We offer mobile  
17 911 – perhaps the greatest personal safety feature available anywhere. We offer GPS  
18 location for mobile subscribers where implemented by the PSAP. In addition, we operate  
19 in an environment where carriers do not believe that customer service is something that  
20 must be mandated by the government – we expect that competitive choice in rural LEC  
21 areas will get rural telephone companies thinking more like competitors (fighting for  
22 customers) and less like regulated monopolies (fighting to prevent competition).

23 **Q: DOES COMPARABILITY FIT IN AS A UNIVERSAL SERVICE GOAL?**

1 A: Absolutely. Section 254(b)(3) of the Act states:

2 [C]onsumers in rural, insular, and high cost areas, should have access to  
3 telecommunications and information services, including interexchange  
4 services and advanced telecommunications and information services, that  
5 are reasonably comparable to those services provided in urban areas and  
6 that are available at rates that are reasonably comparable to rates charged  
7 for similar services in urban areas. (Emphasis added).

8 Fundamentally, universal service is about bringing services to rural areas in a manner that  
9 is comparable to that provided in urban consumers. Nextel Partners furthers this  
10 fundamental aspect of universal service by offering rural consumers service, rates, terms  
11 and conditions that are the same in its rural areas as are provided by Nextel  
12 Communications in urban areas. This aspect of comparability is directly in line with  
13 universal service goals.

14 **Q: DOES NEXTEL PARTNERS PROVIDE GOOD CUSTOMER SERVICE?**

15 A: Yes, without question. Nextel Partners takes great pride in the level of customer service  
16 it provides. There is great competition within wireless markets, and as a result consumers  
17 have the ability to demand that companies are meeting their needs – if a competitive  
18 wireless carrier such as Nextel Partners cannot reliably meet its customers' expectations  
19 for customer service, the customers vote with their feet. Since we are in the business of  
20 showing each customer why Nextel Partners is the best of the available alternatives for  
21 his or her mobile communications needs, we have made a strong corporate commitment  
22 to ensuring high quality customer satisfaction and service. This has resulted in Nextel  
23 Partners having the highest customer retention rate in the industry – 98.5% in the first  
24 quarter of 2004.

1 Because designating Nextel Partners as an ETC in rural telephone company areas in  
2 Kentucky will bring the benefits of competition without causing adverse impacts for  
3 consumers or for incumbent rural telephone companies, the Commission should find that  
4 designating Nextel Partners as an ETC serves the public interest in accordance with  
5 Section 214(e)(2).

6 **Q: WOULD NEXTEL PARTNERS' DESIGNATION SERVE THE PUBLIC INTEREST IN ANY OTHER**  
7 **WAYS?**

8 A: As I discussed earlier, Nextel Partners has offered several specific commitments  
9 regarding service quality, reporting, network expansion, and use of federal universal  
10 service support. The FCC has confirmed that the public interest is served by these  
11 commitments. Thus, the Commission should also find that Nextel Partners' commitments  
12 are in the public interest.

13 **Q: CAN YOU SUMMARIZE YOUR TESTIMONY?**

14 A: Yes. Nextel Partners has shown that it meets each and every one of the requirements to  
15 be designated an ETC set forth in 47 U.S.C. § 214(e) and Part 54 of the FCC's rules.  
16 Furthermore, it is in the public interest to grant the ETC designation, because of the  
17 increased competition, innovative service, and enhanced consumer choices that Nextel  
18 Partners can bring to the areas in which it seeks designation. Therefore, Nextel Partners  
19 urges the Commission to approve its Petition for ETC designation.

20 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

21 A: Yes.

**PEABODY EXHIBIT NO. 1**

**BellSouth Wire Centers for Which Nextel Partners Seeks ETC Designation in This Application**

BDFRKYMA	HABTKYMA	LSVLKYSM	RBRDKYMA
BGDDKYMA	HANSKYMA	LSVLKYTS	RCMDKYMA
BLFDKYMA	HBVLKYMA	LSVLKYVS	RLVLKYMA
BRGNKYMA	HDBGKYMA	LSVLKYWE	RSTRKYES
BRTWKYES	HNSN KYMA	MACEKYMA	SDVLKYMA
BWLGTKYMA	HPVLKYMA	MCDN KYMA	SEBRKYMA
BWLGKYRV	HRBGKYES	MDBOKYMA	SHVLKYMA
BYVLKYMA	HRFRKYMA	MDVIKYMA	SLPHKYMA
CHPLKYMA	HRLN KYMA	MGFDKYMA	SLVSKYMA
CLPTKYMA	HWVLKYMA	MGTWKYMA	SNTN KYMA
CMBGKYMA	JCSN KYMA	MLBGKYMA	SPFDKYMA
COTN KYMA	JLLCTNMA	MLTN KYMA	SRGHKYMA
CRBN KYMA	JNCYKYMA	MTEDKYMA	SSVLKYMA
CRBOKYMA	KKVLKYMA	MTSTKYMA	STCHKYMA
CRLSKYMA	LBJTKYMA	MYVLKYMA	STFRKYMA
CYDN KYMA	LGRN KYES	NRVLKYMA	STGRKYMA
CYN TKYMA	LOUSKYES	NWHN KYMA	STRGKYMA
DAVLKYMA	LRBGKYMA	OKGVKYES	TYVLKYMA
DIXN KYMA	LSVLKY26	OWBOKYMA	UTICKYMA
EDVLKYMA	LSVLKYAN	OWTN KYMA	WACOKYMA
EKTN KYMA	LSVLKYAP	PARSKYMA	WDDYKYMA
EMNN KYES	LSVLKYBE	PDCHKYMA	WHVLKYMA
EMNN KYPL	LSVLKYBR	PIVLKYMA	WLBGKYMA
ENSRKYMA	LSVLKYCW	PKVLKYMA	WLVLYKYMA
FKLN KYMA	LSVLKYFC	PLRGKYMA	WNCHKYMA
FNVLYKYMA	LSVLKYHA	PNTHKYMA	WNCHKYPV
FORDKYMA	LSVLKYJT	PNVLKYMA	WSBGKYMA
FRFTKYES	LSVLKYOA	PRTN KYES	WSPN KYMA
FRFTKYMA	LSVLKYSH	PRVLKYMA	
GRTWKYMA	LSVLKYSL	PTRYKYMA	

**Alltel (formerly Verizon) Wire Centers for Which Nextel Partners Seeks ETC Designation  
in This Application**

• **Kentucky Alltel, Inc. – Lexington Study Area Code 269690)**

ALBYKYXA	GNBGKYXB	LXTNKYXB	OWVLKYXA
ASLDKYXA	GNUPKYXA	LXTNKYXC	PNLCKYXE
BEREKYXA	GYSNKYXA	LXTNKYXD	RSSLKYXB
BRSDKYXA	HGVLKYXA	LXTNKYXE	SHBGKYXA
BSVLKYXA	HLBOKYXA	LXTNKYXF	SHDNKYXA
BTVLKYXA	HTVLKYXE	LXTNKYXG	SLLCKYXA
CECLKYXA	HZRDKYXA	MDWYKYXA	SMRTKYXA
CLMAKYXA	LBNNKYXA	MEDSKYXA	SSHRKYXA
CMVLKYXA	LBRTKYXA	MNTIKYXA	VNBGKYXA
CTBGKYXA	LNCISKYXA	MRHDKYXA	VRSLKYXA
EZTWKYXA	LRTTKYXA	NANCKYXA	WLMRKYXA
FMBGKYXA	LTFDKYXA	NCVLKYXA	
GLSGKYXA	LXTNKYXA	OLHLKYXA	

• **Kentucky Alltel, Inc. – London (Study Area Code 269691)**

AGSTKYXA	CYVLKYXA	LVTNKYXA
BBVLKYXA	EBNKKYXA	MNCHKYXA
BESPKYXA	EBRNKYAC	MTOLKYXA
BRHDKYXA	FBSHKYXA	MTVRKYAI
BWVLKYXA	FLLCKYXA	MYLCKYXA
CKSNKYXA	IRVNKYXA	SCHLKYXA
CLCTKYXA	LONDKYXA	SMGVKYXA

**Rural Telephone Company Study Areas for Which Nextel Partners Seeks ETC Designation  
in This Application**

<u>Study Area Code</u>	<u>Company Name</u>
260412	Lewisport Telephone Company
260413	Logan Telephone Cooperative, Inc.
260414	Mountain Rural Telephone Cooperative Corporation, Inc.
260415	Peoples Rural Telephone Cooperative Corporation, Inc.
260418	South Central Rural Telephone Cooperative Corporation, Inc.

**PEABODY EXHIBIT NO. 2**


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 Search:  
[PHONES & RATE PLANS](#)
[SERVICES](#)
[CUSTOMER SUPPORT](#)
[MY NEXTEL](#)
[ABOUT NEXTEL](#)
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- Getting Started
- Check Order Status
- Guides & Tutorials
- Reading Your Bill
- Service & Repair
- FAQs


**QUESTIONS?**

&gt; Chat online for instant help.

Have a Sales Rep call me

**RATE PLANS**
**How to Shop**

Select Plan  
Select Services  
Select a Phone  
Checkout

**Cart Summary**

Your cart is currently empty.

Shipping Charges

&gt; GREAT WEB SAVINGS!

Can I  
Bring My  
Number to  
Nextel?

> CHECK HERE BEFORE YOU BUY

Select a rate plan. If you are purchasing more than one phone, you will have an opportunity to select additional rate plans, if desired, prior to Checkout.

View coverage map for Lexington, KY

**Rate Plans\* available for ZIP Code 40601**  
Change ZIP Code

**BEST SELLING RATE PLANS**

- > Nextel National Free Incoming 250
- > Nextel National Free Incoming 400
- > Nextel National Value 500

**Nextel National Value Plans** - Add value instantly with generous buckets of Anytime Cellular minutes along with Unlimited Night and Weekend minutes. Also, get Direct Connect<sup>SM</sup> minutes and Nationwide Long Distance along with no roaming charges.

**CELLULAR MINUTES**

Add to Cart	Plan	Monthly Fee	Anytime Minutes	Night & Weekend Minutes	Long Distance	Direct Connect
<input type="button" value="Add"/>	Nextel National Value 500	\$39.99	500	Unlimited	Included	100
<input type="button" value="Add"/>	Nextel National Value 1000	\$59.99	1000	Unlimited	Included	100
<input type="button" value="Add"/>	Nextel National Value 2000	\$99.99	2000	Unlimited	Included	100

Other monthly charges apply. See below. \*\*

**Nextel National Free Incoming Plans** - Stay in touch with Free Incoming Calls and Unlimited Direct Connect<sup>SM</sup>. Plus, get Unlimited Night and Weekend minutes and Nationwide Long Distance included along with no roaming charges.

**CELLULAR MINUTES**

Add to Cart	Plan	Monthly Fee	Anytime Minutes	Night & Weekend Minutes	Long Distance	Direct Connect
<input type="button" value="Add"/>	Nextel National Free Incoming 250	\$49.99	250	Unlimited	Included	Unlimited
<input type="button" value="Add"/>	Nextel National Free Incoming 400	\$59.99	400	Unlimited	Included	Unlimited
<input type="button" value="Add"/>	Nextel National Free Incoming 600	\$69.99	600	Unlimited	Included	Unlimited
<input type="button" value="Add"/>	Nextel National Free Incoming 800	\$89.99	800	Unlimited	Included	Unlimited

PEABODY  
EXHIBIT 2

Other monthly charges apply. See below.\*\*

**Nextel National Free Incoming Plus Plans** - Try a little bit of everything with this combination of cellular, Direct Connect<sup>SM</sup> and data services. In addition to getting free incoming calls, you will get Unlimited Night and Weekend minutes, Unlimited Direct Connect<sup>SM</sup> minutes and Nationwide Long Distance. Plus, you will also get Premium Web, Two-Way Messaging Premier and Address Book.

#### CELLULAR MINUTES

Add to Cart	Plan	Monthly Fee	Anytime Minutes	Night & Weekend Minutes	Long Distance	Direct Connect
<b>Add</b>	Nextel National Free Incoming Plus 250	<b>\$59.99</b>	250	Unlimited	Included	Unlimited
<b>Add</b>	Nextel National Free Incoming Plus 400	<b>\$69.99</b>	400	Unlimited	Included	Unlimited
<b>Add</b>	Nextel National Free Incoming Plus 600	<b>\$79.99</b>	600	Unlimited	Included	Unlimited
<b>Add</b>	Nextel National Free Incoming Plus 800	<b>\$99.99</b>	800	Unlimited	Included	Unlimited

Other monthly charges apply. See below.\*\*

**NASCAR NEXTEL Cup Series<sup>TM</sup> Plan** - Get on the fast track with the perfect rate plan for the NASCAR NEXTEL Cup Series<sup>TM</sup> phones. You will get a large bucket of cellular minutes along with unlimited Night and Weekend, Direct Connect and Nationwide Direct Connect<sup>SM</sup> minutes. You will also get the NASCAR Nextel Online Services package including NASCAR.com TO GO. The NOL Racing Connection service which is included in the plan works best with the following handsets: i736, i730 and i733.

#### CELLULAR MINUTES

Add to Cart	Plan	Monthly Fee	Anytime Minutes	Night & Weekend Minutes	Long Distance	Direct Connect
<b>Add</b>	NASCAR NEXTEL Cup Series <sup>TM</sup> 500 Plan <sup>1</sup>	<b>\$54.99</b>	500	Unlimited	\$0.20/minute	Unlimited

Other monthly charges apply. See below.\*\*

**Nextel National Team Share Plans** - To get the best value, we recommend purchasing 2 phones and 2 Nextel National Team Share rate plans. Share cellular and Direct Connect<sup>(R)</sup> minutes from one account! Select 2 rate plans from the chart below, add 2 phones, and you're ready to go! Perfect for the family. >>Example

#### CELLULAR MINUTES

Add to Cart	Plan	Monthly Fee	Anytime Minutes	Night & Weekend Minutes	Long Distance	Direct Connect
<b>Add</b>	Nextel National Team Share Add-on	<b>\$15.00</b>	0	Unlimited	Included	250
<b>Add</b>	Nextel National Team Share 400	<b>\$39.99</b>	400	Unlimited	Included	250
<b>Add</b>	Nextel National Team Share 600	<b>\$49.99</b>	600	Unlimited	Included	250
	Nextel National	<b>\$69.99</b>	800	Unlimited	Included	250

<b>Add</b>	Team Share 800					
<b>Add</b>	Nextel National Team Share 1000	<b>\$89.99</b>	1000	Unlimited	Included	250

Other monthly charges apply. See below.\*\*

**Nextel National Shared Minutes Plans** - To get the best value, we recommend purchasing 2 or more phones and 2 or more Nextel National Shared Minutes rate plans. Share cellular and Direct Connect<sup>(R)</sup> minutes from one account! Select 2 or more rate plans from the chart below, add 2 or more phones, and you're ready to go! Great for small businesses. >>Example

#### CELLULAR MINUTES

Add to Cart	Plan	Monthly Fee	Anytime Minutes	Night & Weekend Minutes	Long Distance	Direct Connect
<b>Add</b>	Nextel National Shared Minutes 100	<b>\$39.99</b>	100	NA	Included	Unlimited
<b>Add</b>	Nextel National Shared Minutes 500	<b>\$55.99</b>	500	NA	Included	Unlimited
<b>Add</b>	Nextel National Shared Minutes 700	<b>\$69.99</b>	700	NA	Included	Unlimited
<b>Add</b>	Nextel National Shared Minutes 1000	<b>\$89.99</b>	1000	NA	Included	Unlimited

Other monthly charges apply. See below.\*\*

**Nextel Local Instant Connect Plans** - Instantly connect to other Nextel subscribers with Unlimited Direct Connect<sup>SM</sup> minutes. In addition, get Unlimited Night and Weekend minutes along with no roaming charges.

#### CELLULAR MINUTES

Add to Cart	Plan	Monthly Fee	Anytime Minutes	Night & Weekend Minutes	Long Distance	Direct Connect
<b>Add</b>	Nextel Local Instant Connect UDC	<b>\$35.99</b>	0	Unlimited	\$0.20/minute	Unlimited
<b>Add</b>	Nextel Local Instant Connect 500	<b>\$39.99</b>	500	Unlimited	\$0.20/minute	Unlimited
<b>Add</b>	Nextel Local Instant Connect 700	<b>\$49.99</b>	700	Unlimited	\$0.20/minute	Unlimited
<b>Add</b>	Nextel Local Instant Connect 1000	<b>\$59.99</b>	1000	Unlimited	\$0.20/minute	Unlimited

Other monthly charges apply. See below.\*\*

**Nextel National Unlimited NDC Plus Plan** - New - Everything is unlimited including Nationwide Direct Connect<sup>SM</sup>! Includes unlimited incoming, outgoing, Domestic Long Distance, Direct Connect<sup>SM</sup> and Nationwide Direct Connect<sup>SM</sup> calls. Also includes unlimited AOL<sup>®</sup> Instant Messenger, unlimited Two-Way Messaging and Mobile Email with the Nextel Full Service Package.

## CELLULAR MINUTES

Add to Cart	Plan	Monthly Fee	Anytime Minutes	Night & Weekend Minutes	Long Distance	Direct Connect
<a href="#">Add</a>	National Unlimited NDC Plus	\$199.99	Unlimited	Unlimited	Included	Unlimited

Other monthly charges apply. See below.\*\*

\*\*Nextel also imposes a Federal Programs Cost Recovery (FPCR) fee of \$1.55 or \$2.83. The FPCR is not a tax or government required charge. The fee is charged for one or more of the following: E911, number pooling and wireless number portability.

\*Prices are subject to change without notification.

<sup>1</sup> NASCAR and the NASCAR logo are registered trademarks of the National Association for Stock Car Auto Racing, Inc. The NASCAR NEXTEL Cup Series marks are used under license by NASCAR, Inc. and Nextel Communications, Inc. Details

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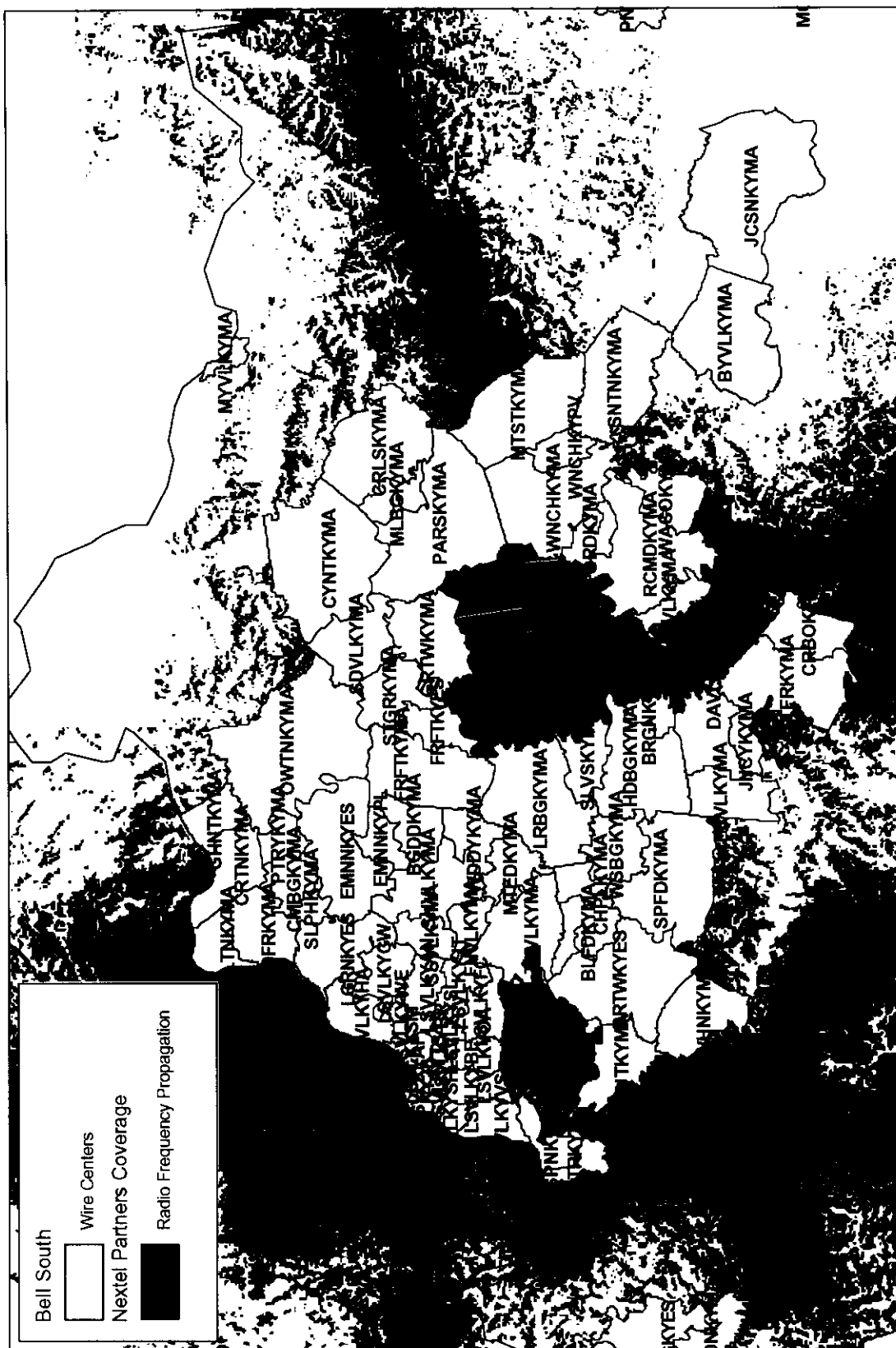


**PEABODY EXHIBIT NO. 3**

**PEABODY EXHIBIT NO. 3(a)**

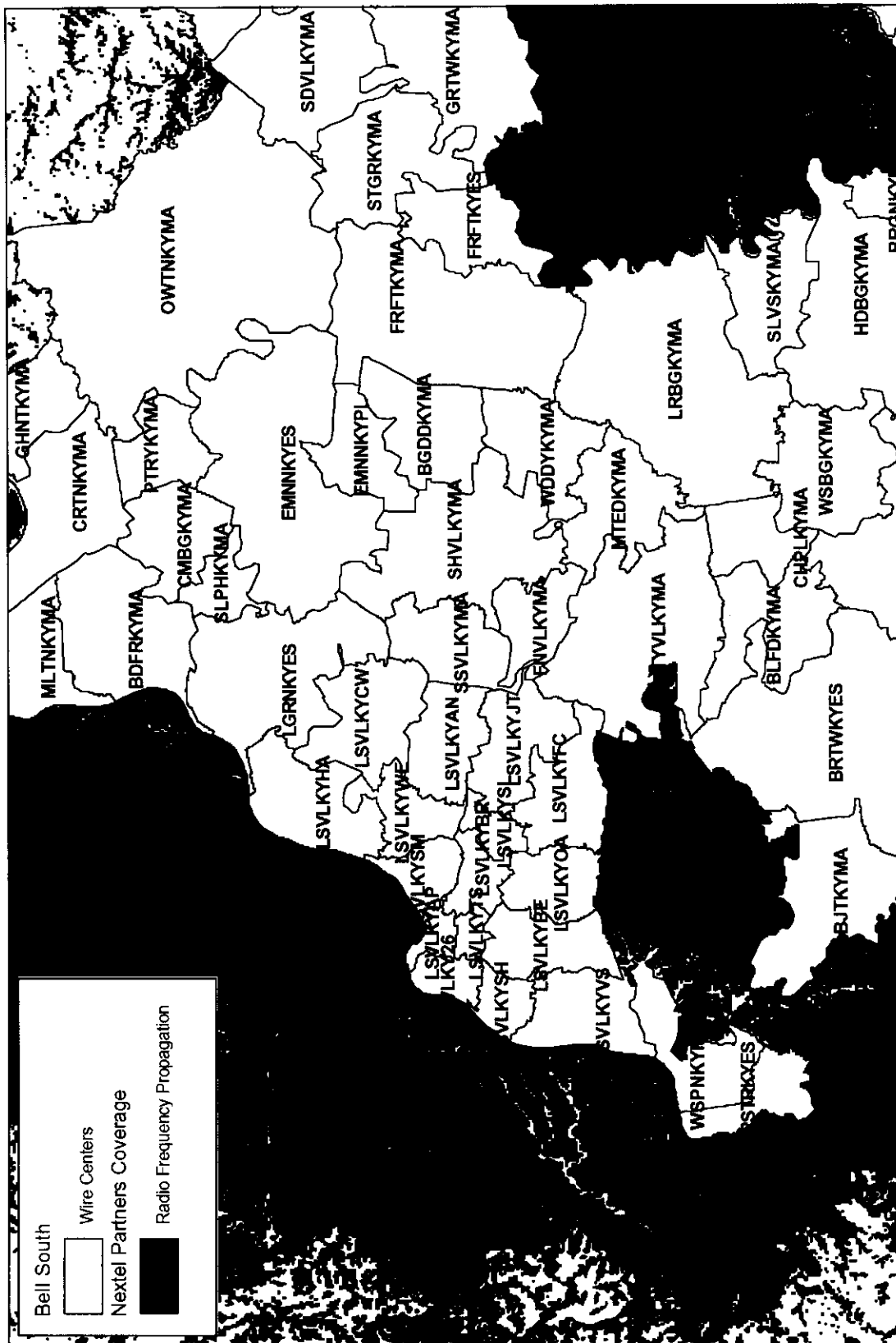


**PEABODY EXHIBIT NO. 3(b)**



PEABODY  
EXHIBIT 3(b)

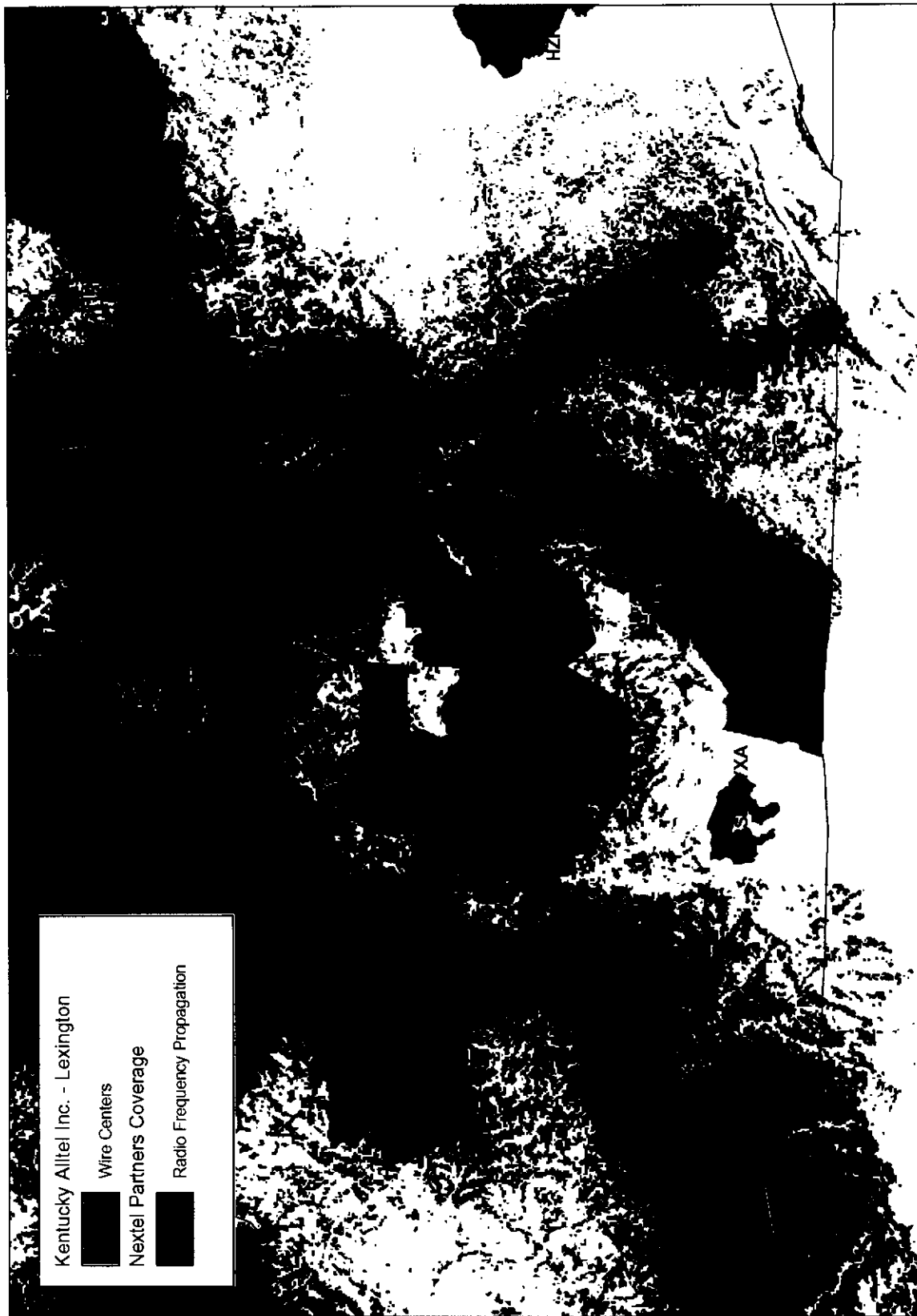
**PEABODY EXHIBIT NO. 3(c)**



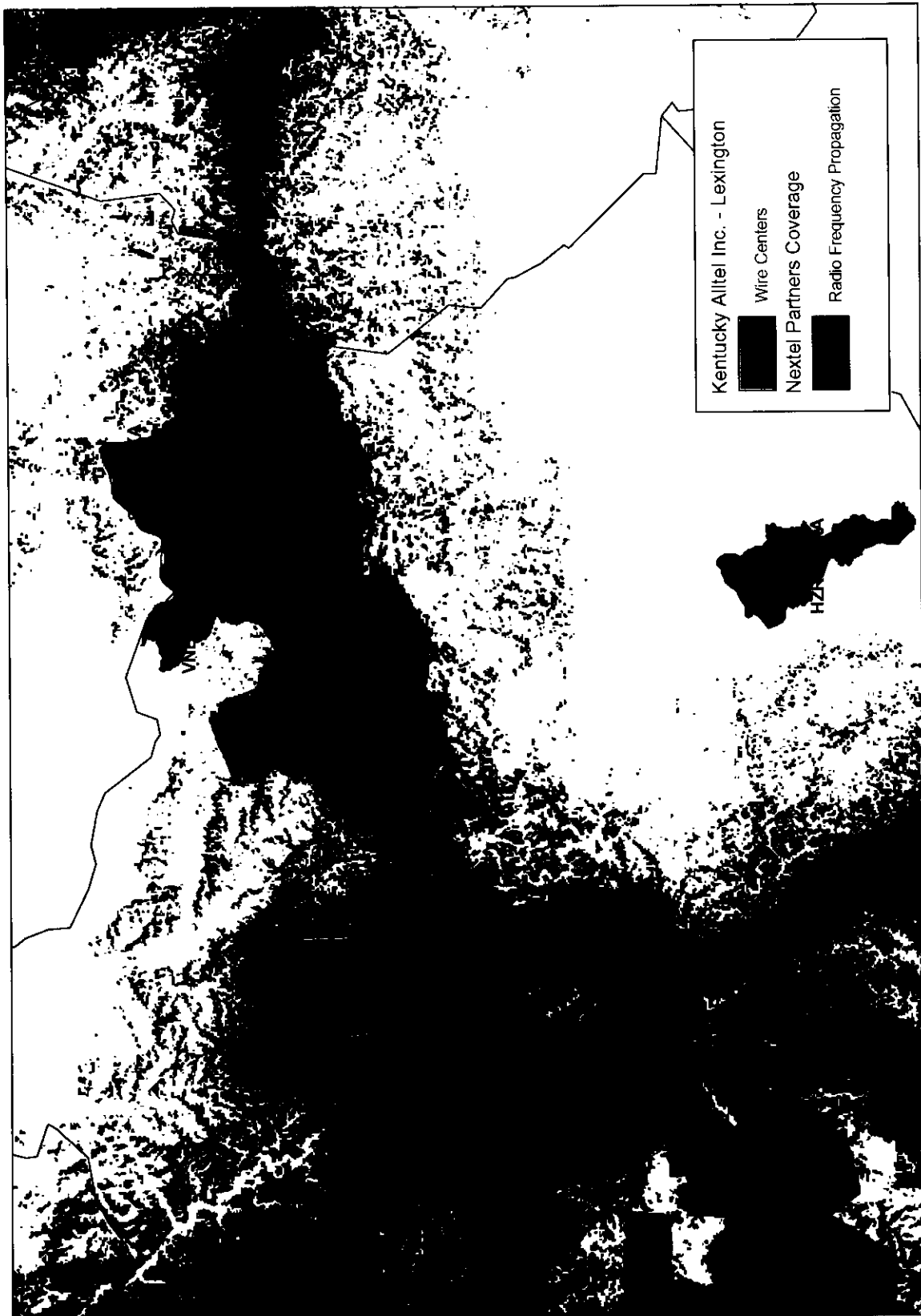
**PEABODY EXHIBIT NO. 3(d)**



**PEABODY EXHIBIT NO. 3(e)**



**PEABODY EXHIBIT NO. 3(f)**



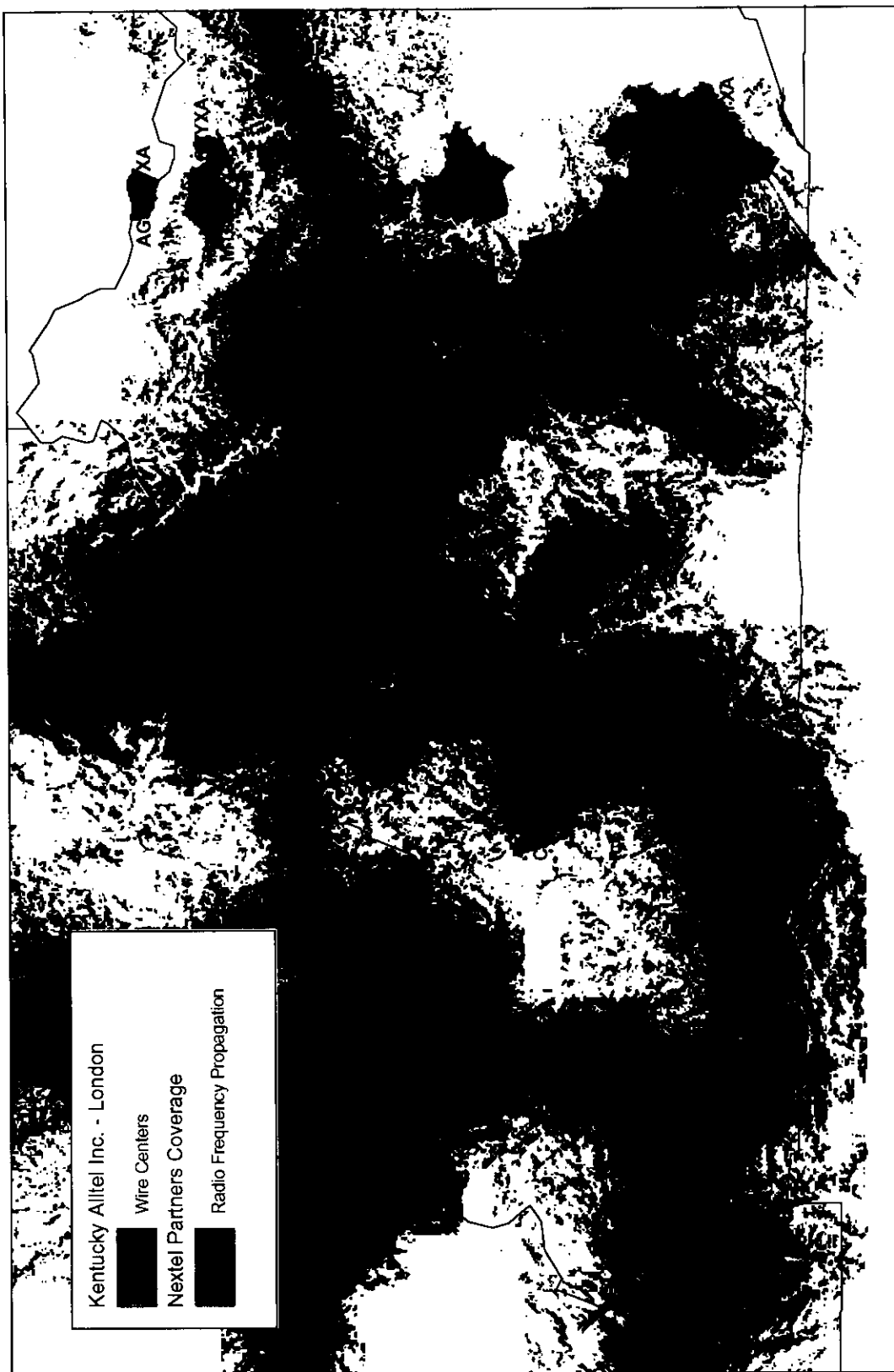
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EXHIBIT 3(f)

**PEABODY EXHIBIT NO. 3(g)**



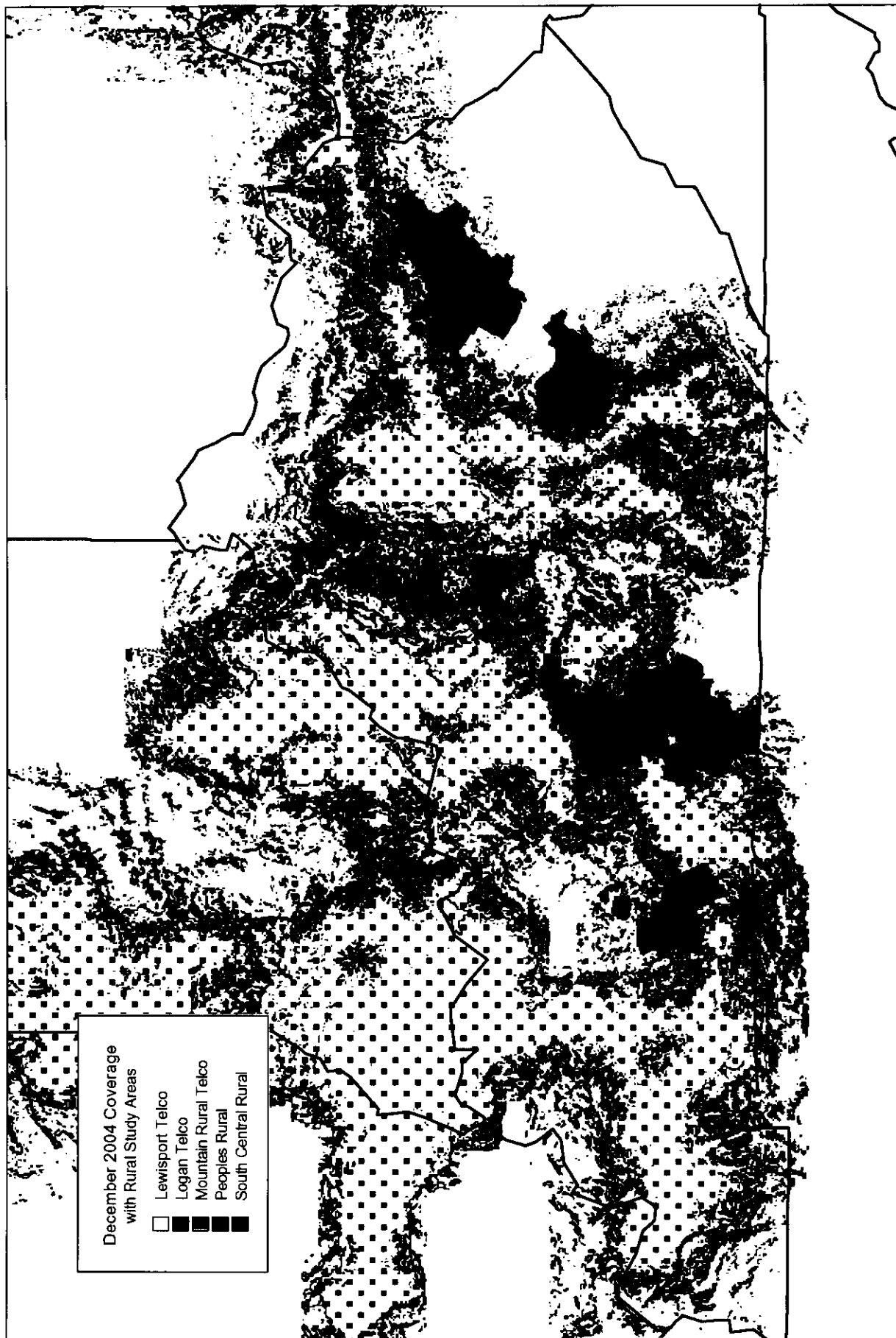
PEABODY  
EXHIBIT 3(g)

**PEABODY EXHIBIT NO. 3(h)**



PEABODY  
EXHIBIT 3(h)

**PEABODY EXHIBIT NO. 4**



PEABODY  
EXHIBIT 4

## **PEABODY EXHIBIT NO. 5**

### **ADVERTISING PLAN OF NPCR, INC.**

NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners") submits the following advertising plan pursuant to the above application.

- (1) Pursuant to 47 U.S.C. § 214(e)(1), Nextel Partners will advertise throughout each ETC designated service area in Kentucky. Nextel Partners will advertise the availability of the supported services and the corresponding charges within the service areas in a manner that fully informs the general public.
- (2) Nextel Partners will advertise its provision of universal services throughout its designated areas in Kentucky. Through its arrangement with Nextel Communications, Inc., the Nextel Brand name will be advertised nationally using media of general distribution that reaches customers throughout , including television, radio, newspapers, and at [www.Netxel.com](http://www.Netxel.com).
- (3) Nextel Partners will also comply with all form and content requirements, if any, adopted by the Federal Communications Commission (FCC) or the Kentucky Public Service Commission ("Commission") in the future and required of all ETCs.

#### **Service Offerings**

Nextel Partners' current service offerings available directly from the company are attached to the Direct Testimony of Scott Peabody. All voice offerings contain voice grade access to the public switched telephone network; local usage free of per minute charges; dual tone multi-frequency signal or its functions equivalent; single party service or its functions equivalent; access to emergency service; access to operator services; access to interexchange services; and access to directory assistance.

#### **Lifeline/Link-up**

Qualifying low-income consumers can obtain Lifeline and Link-up discounts. Any Lifeline customer can elect toll blocking without charge.

Nextel Partners will advertise the availability of Lifeline via bill inserts, at retail stores, on its website, and by posting such information at the USAC sponsored public access website [www.lifelinesupport.org](http://www.lifelinesupport.org).

**PEABODY EXHIBIT NO. 6**

## STATE OF INDIANA

## INDIANA UTILITY REGULATORY COMMISSION

ORIGINAL

IN THE MATTER OF THE DESIGNATION )  
 OF ELIGIBLE TELECOMMUNICATIONS )  
 CARRIERS BY THE INDIANA UTILITY )  
 REGULATORY COMMISSION PURSUANT )  
 TO THE TELECOMMUNICATIONS ACT OF )  
 1996 AND RELATED FCC ORDERS, AND IN )  
 PARTICULAR, THE APPLICATION OF )  
 NPCR, INC. d/b/a NEXTEL PARTNERS )  
 TO BE DESIGNATED )

CAUSE NO. 41052-ETC 43

APPROVED: MAR 17 2004

**BY THE COMMISSION:**

David E. Ziegner, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

On April 21, 2003, NPCR, Inc. d/b/a Nextel Partners ("NPCR" or "Petitioner") filed its Verified Petition for Designation as an Eligible Telecommunications Carrier ("ETC"). By its petition, Petitioner requested the Indiana Utility Regulatory Commission ("Commission") to designate it as an ETC pursuant to 47 U.S.C. § 214(e), for the areas described in the petition.

Pursuant to notice duly given as provided for by law, a hearing was held at 9:30 a.m. on Thursday, October 2, 2003, in Room TC 10 of the Indiana Government Center South, Indianapolis, Indiana 46204. Prior to that hearing, Clay County Rural Telephone, Inc. ("CCRTC"), Indiana Exchange Carriers Association, Inc. ("INECA"), Smithville Telephone Company ("Smithville") and Verizon North, Inc. and Contel of the South, Inc. d/b/a Verizon North Systems ("Verizon") petitioned to intervene in these proceedings. The requested interventions were granted.

At the hearing Petitioner offered its Exhibit 1 (a copy of its Verified Petition), Exhibit 2 (Prefiled Direct Testimony of Don Wood), Exhibit 3 (Prefiled Direct Testimony of Scott Peabody), Exhibit 4 (Prefiled Rebuttal Testimony of Don Wood), Exhibit 5 (Prefiled Rebuttal Testimony of Scott Peabody) and Confidential Exhibit 6, as Petitioner's case-in-chief, which Exhibits were admitted into the record. The Petitioner's witnesses were cross-examined by all parties to these proceedings. CCRTC offered CCRTC's Exhibit 1 (Prefiled Direct Testimony of its witness Brad Welp) and Exhibit 2 (Petitioner's Response to CCRTC's data request), which were admitted into the record. CCRTC's witness was cross-examined by all parties. INECA offered INECA's Exhibit 1 (Prefiled Testimony of its witness Bruce Hazelett) which was admitted into the record. INECA's witness was cross-examined by all parties. The Indiana Office of Utility Consumer Counselor ("OUCC") offered OUCC's Exhibit 1 (the Prefiled Testimony of its witness Ronald Keen) which was admitted into the record. The OUCC witness was cross-examined by all parties. Smithville and Verizon did not submit any Exhibits or offer any testimony. The Presiding Officers also permitted the Petitioner to file a late filed Exhibit [Petitioner's Exhibit 7 (Late Filed)] revising the areas for which it is seeking eligible

PEABODY  
EXHIBIT 6

telecommunication carrier status, which late filed Exhibit was further revised and admitted as Petitioner's Late Filed Exhibit 7 (Late Filed Revised). The Presiding Officers also admitted Petitioner's Exhibit 8 (Late Filed) and Exhibit 9 (Late Filed), which documents were requested by the Presiding Officers at the hearing.

The Commission, having examined all of the evidence of record and being duly advised in the premises, now finds as follows:

1. **Notice and Jurisdiction.** Proper, legal and timely notice of the hearing in this Cause was given and published by the Commission as provided for by law. The proofs of publication of the notice of the hearing have been incorporated into the record of this proceeding. Pursuant to the Telecommunications Act of 1996, 47 U.S.C. § 151, *et seq.* (the "Act"), and applicable Federal Communications Commission ("FCC") rules in 47 C.F.R. §§ 54.201 and 54.203, this Commission is authorized to designate ETCs, thereby enabling those so designated to apply for universal service support under 47 U.S.C. § 254. The Commission, therefore, has jurisdiction over the parties and subject matter of this Cause.

2. **Petitioner's Characteristics.** Petitioner is a "Telecommunications Carrier", as defined by 47 U.S.C. § 153(44). The specific areas for which Petitioner requests designation as an ETC were identified in Attachment 1 attached to Petitioner's Verified Petition (Exhibit 1). Attachment 1 was revised and the final designated areas for which Petitioner seeks ETC designation are as set forth in Petitioner's Exhibit 7 (Late Filed Revised). Petitioner's evidence indicates that Petitioner is a provider of wireless services, authorized by the FCC to serve in Indiana. Petitioner's service is commercial mobile radio service ("CMRS"), and thus regulated by the FCC. Petitioner provides Nextel services to small and rural markets within Indiana. Petitioner's business plan is to offer consumers in small and rural markets the same services, at the same rates, that are offered by Nextel Communications in urban markets. Petitioner was formed in 1998 and began providing service in Indiana in 2001. During that time, Nextel Partners placed 97 cell sites into service in Indiana, representing a network investment of \$25-30 million.

3. **Requirements for ETC Designation.** In Cause No. 40785, this Commission adopted the FCC's original eligibility requirements for designation of ETCs in the State of Indiana. Accordingly, each Indiana ETC receiving federal universal service support is required by FCC Rule 54.101(b) to offer the following nine universal services or functionalities, which are described more fully in Rule 54.101(a):

- a. Voice grade access to the public switched network;
- b. Local usage;
- c. Dual tone multi-frequency signaling or an equivalent;
- d. Single-party service or its functional equivalent;
- e. Access to emergency services;
- f. Access to operator services;
- g. Access to interexchange service;
- h. Access to directory assistance;
- i. Toll limitation for qualifying low-income customers.

In addition to offering the above nine universal services, ETCs are required by FCC Rules 54.405 and 54.411 to offer qualifying low-income customers both "Lifeline" and Link Up" programs as a condition precedent to receiving federal universal service support. FCC Rule 54.201(d)(2) also requires ETCs receiving federal universal service support to publicize the availability of the nine universal services and the Lifeline and Link Up programs and the charges therefore using media of general distribution. Pursuant to this Commission's November 5, 1997 Order in Cause No. 40785, carriers seeking ETC designation in Indiana must also file proposed Lifeline/Link Up tariffs and boundary maps depicting the areas for which ETC designation is sought.

Finally, because NPCR seeks to be designated as an additional ETC in rural service areas in Indiana, this Commission must also make a specific determination as to whether the public interest would be served by designating more than one ETC in the specified rural service areas. Specifically, the federal Telecommunications Act provides that:

[U]pon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of Paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 U.S.C. § 214(e)(2).

This Commission has not yet entered an order interpreting or applying the above "public interest" test to any request for designation as an additional, competitive ETC in rural service areas or in any prior generic proceedings. Accordingly, this case, and another pending case (IURC Cause No. 41052-ETC-45, filed by the Centennial companies) are cases of first impression in Indiana.

#### **4. Evidence Admitted**

##### **A. NPCR Testimony**

The Petition, which was admitted into the record as Petitioner's Exhibit 1 and incorporated herein by reference, states that NPCR provides all nine of the universal services or functionalities required by FCC Rule 54.101(b). The Petition also states that NPCR will provide Lifeline and Link Up discounts to qualifying low-income customers as required by FCC Rules 54.405 and 54.411 if it is designated as an ETC in this proceeding.

NPCR also presented evidence to support its compliance with each of the elements required under federal law for designation as an ETC. At the hearing, NPCR offered its Exhibit 1 (a copy of its Verified Petition), Exhibit 1A (a copy of its amended petition), Exhibit 2

(Prefiled Direct Testimony of Don Wood), Exhibit 3 (Prefiled Direct Testimony of Scott Peabody), Exhibit 4 (Prefiled Rebuttal Testimony of Don Wood), Exhibit 5 (Prefiled Rebuttal Testimony of Scott Peabody) and Confidential Exhibit 6 as Petitioner's case-in-chief, which exhibits were admitted into the record.

On August 1, 2003, NPCR prefiled testimony for its two witnesses, Scott Peabody and Don J. Wood. Mr. Peabody, Director in NPCR's Engineering Department, testified that NPCR was a "telecommunications carrier" as defined under the Act and is a provider of Commercial Mobile Radio Service ("CMRS") in various rural "Economic Areas" found in Indiana. NPCR is a separate corporation from Nextel Communications, although the latter is the largest shareholder of NPCR. Mr. Peabody made clear that the ETC designation NPCR seeks is solely for federal USF purposes. Although altered after the application was filed and after the close of the hearing in this proceeding, NPCR seeks designation in 10 RTC areas in the State of Indiana where NPCR's FCC license covers the entire service area of each such company.

Mr. Peabody testified as to the FCC requirements regarding ETC designation, noting that the FCC has made clear that both wireless and wireline entities meeting the threshold requirements for ETC designation are eligible to seek such status. Mr. Peabody outlined the services and functionalities required to be offered by ETCs under the applicable FCC rule, 47 C.F.R. §54.101(a). Mr. Peabody indicated that NPCR could provide each of the FCC-listed services and/or functionalities except for toll limitation service to qualifying low income consumers. According to Mr. Peabody, toll limitation was "linked" to Lifeline service for low income consumers. He indicated that voice grade access to the public switched telephone network was provided through interconnection agreements that NPCR had with local telephone companies, noting specifically Ameritech and GTE. Further, Mr. Peabody indicated that, while the FCC had not established a minimum amount of local usage required to be included in an ETC's universal service offering, he believed NPCR complied with the requirement because each of the offerings that NPCR makes available includes local usage. With respect to interexchange services, Mr. Peabody testified that each NPCR customer has the ability to make or receive toll calls through arrangements that NPCR has made with certain interexchange carriers ("IXCs") or though the ability of the customer to dial the access code of the IXC he/she wanted to use. Mr. Peabody also discussed the remaining elements in the FCC's list of universal service.

To support its application, and although some of the attachments/exhibits were subsequently modified, Mr. Peabody attached the then current service plans of NPCR, "detailed maps" of NPCR's coverage area overlaid on the affected RTCs' Study Areas, and a separate map with respect to the Verizon exchanges. Mr. Peabody testified that NPCR is not required to show that it can serve every customer in the requested ETC designated area. Rather, it must comply with a "reasonable request for service" throughout such area once ETC designation is granted.

With respect to advertising its universal service offering, Mr. Peabody indicated that NPCR will advertise the availability of its universal service offering and the corresponding charge in a manner that "fully informs the general public" located within the geographic area covered by its application. This advertising would continue to be in conjunction with Nextel Communications, and would advertise via general printed and electronic media, point of sale

locations and over the Internet. Mr. Peabody included a copy of NPCR's planned advertising as an exhibit to his testimony.

Because certain of the areas covered by the application were for areas served by RTCs, Mr. Peabody testified to the specific additional requirement that the Federal Act requires, *i.e.*, that the state commission must find that such additional ETC designation is in the "public interest." Mr. Peabody, relying on FCC directives, indicated that the Commission should presume in its analysis that "competition benefits consumers, and that citizens throughout the state are entitled to the benefits of competitive universal service." Moreover, he indicated that the Commission should look to "whether consumer benefits will be outweighed by demonstrated adverse impacts on consumers resulting from the designation." Thereafter, Mr. Peabody explained his views as to why NPCR met these standards, relying upon his observations that competitive service providers are "hard to find" in rural areas and that such areas lack choice of providers. Citing the need to provide a "level playing field" and that wireless providers are the "only real chance at bringing meaningful competition to these service areas," Mr. Peabody indicated that access to federal USF disbursements will allow NPCR to expand its network throughout the state and otherwise allow CMRS infrastructure to bring universal service and advanced services to rural consumers. Moreover, he suggested that, since NPCR provides mobile service, NPCR's service is more "universal" than the telephone companies.

In closing, Mr. Peabody testified to the level of service that NPCR provides vis-à-vis other wireless service providers. According to Mr. Peabody, if NPCR cannot meet "its customers' expectations for customer service, the customers vote with their feet" with respect to their mobile communications needs. Further, Mr. Peabody indicated that ETC designation will facilitate the continued role of NPCR in providing communications services to a variety of customers, including public schools, libraries, and local and state government agencies, specifically law enforcement. Thus, Mr. Peabody urged the Commission to designate NPCR as an ETC.

Mr. Wood testified on behalf of NPCR regarding the "public interest" aspect of the NPCR petition. Relying upon both his background as a consultant on economic and regulatory matters and his telephone company and IXC industry experience, Mr. Wood indicated he was familiar with the application of universal service mechanisms at both the state and federal levels. With respect to the public interest determination, Mr. Wood noted that he believed that RTCs involved in proceedings in other states had sought to "significantly broaden the scope of review and have attempted to put competition on trial." Such efforts were, in Mr. Wood's view, a distraction since the analysis should focus on the "facts of [NPCR's] Petition." Accordingly, Mr. Woods opined that designating NPCR as an additional ETC in the affected RTCs' service areas would have both short term and long term benefits.

With respect to the short term, Mr. Wood testified consumers would have a choice of technology and suppliers using different technology, along with a "broader array" of services and pricing. Long-term, according to Mr. Wood, consumers would benefit from the "competitive market forces" that he suggested create incentives for such carriers to be "more efficient and responsive to customer needs." Mr. Wood relied upon FCC pronouncements to support his

conclusions, stating that the FCC has rejected the suggestion that an additional ETC would "reduce investment incentives, increase prices, or reduce service quality of the [Incumbent Local Exchange Carrier ("ILEC")]." Similarly, Mr. Wood cited language regarding what the FCC opined to be benefits of competition.

Mr. Wood also testified that he saw two specific reasons for allowing competitive alternatives in rural areas. First, he believed that such alternatives were important for rural economic development, based on business relocation decisions regarding the availability of telecommunications services in an area. Second, he testified that the "availability of affordable and high-quality wireless service is extremely important in rural areas for health and safety reasons." Mr. Wood testified that NPCR offers services that benefit consumers, particularly options and choice based on calling patterns and calling frequency, along with the "greater access to the personal and public safety benefits of wireless services." Mr. Wood also cited to a court ruling that the consumers, not providers, are the focus of the benefits of universal service. As such, Mr. Wood testified that the designation of NPCR as an ETC is in the public interest.

#### **B. OUCC Testimony**

Ronald L. Keen, the OUCC's Director of its Telecommunications Division, presented the Public's evidence through his September 15, 2003 prefiled testimony, which was admitted into evidence.

Mr. Keen generally reviewed the legal basis for designating ETCs and provided background on ETC designations previously made by the Commission. Mr. Keen also identified issues that the OUCC believed should be resolved by the Commission before designating multiple ETCs in areas of Indiana served by RTCs. Mr. Keen recommended that the Commission defer a final ruling in this Cause until the Commission had completed a general investigation and issued an order providing guidance to common carriers that might decide to seek designation as additional landline or wireless ETCs in an RTC's service area.

Mr. Keen's overview of background information on ETC designations reflected that Indiana's ILECs were initially the only carriers to apply for ETC designation in Indiana. However, Mr. Keen noted that one competitive local exchange carrier ("CLEC"), Hancock Communications, Inc., applied for and received ETC status for areas outside its affiliated ILEC's service territory in Cause No. 41052-ETC-42. Mr. Keen further noted that, since Hancock's CLEC ETC case, only a few additional requests for ETC status have been filed with the Commission, including Petitioner's request that is currently under review in this Cause and the Centennial Communications case (41052-ETC-45). Both of these requests, according to Mr. Keen, involved applications by wireless carriers to be designated as additional ETCs in areas of Indiana already served by the rural Local Exchange Carriers ("RLECs.")

Mr. Keen identified several policy issues that the OUCC believed are relevant to the Commission's review of designating a second ETC in areas currently served by RTCs. Mr. Keen expressed the OUCC's concern that designating additional ETCs within the areas served by RTCs could result in the USF fund growing significantly, creating higher funding obligations, and/or higher end user USF surcharges or, in the absence of a surcharge, higher basic rates to

cover the cost of providing service. According to Mr. Keen, the primary interest of universal service is to ensure the "ubiquitous availability of quality telephone services in rural service areas" that are "comparable to services provided in urban areas at comparable and affordable rates." The low population densities in rural areas, in Mr. Keen's view, generally meant longer distances between service locations, increasing the cost of providing service in those areas. He indicated that federal USF disbursements were intended to keep end user rates affordable despite those higher costs. Thus, according to Mr. Keen, if existing rural ETCs lose large numbers of customers to new carriers designated as additional ETCs in the same rural service areas, it might result in higher end user rates or higher universal service funding requirements, a result that could harm, rather than further, universal service goals. Mr. Keen recognized the difficult public interest task assigned to this Commission - "on the one hand, promoting competition" that will offer "additional and improved service options to rural consumers," while on the other hand, keeping local telephone service rates in rural areas at levels that are "fair, reasonable, just, affordable, and comparable to rates charged in urban areas for the same or comparable telecommunication services."

Mr. Keen also identified specific concerns that the OUCC had with respect to NPCR's service offering. Mr. Keen explained that NPCR was not offering at least one flat rate local service offering with unlimited local calling, and was not offering equal access (*i.e.*, toll presubscription) to toll providers. Mr. Keen testified that he was concerned about the comparability of NPCR's local usage plans with those of the ETCs currently serving in the areas where NPCR seeks designation. Mr. Keen also expressed concerns with respect to quality of service.

Mr. Keen indicated that, in designating an additional ETC, the Commission should consider what consumers view as a minimum service standard, augmented by technology-specific additions. The OUCC believed an ETC designation carries with it the obligation to meet or exceed service provision and service quality requirements and expectations. Based on the lack of facts in the record, Mr. Keen did not believe that NPCR had demonstrated that the public interest would be served by its designation as an additional ETC in the various RTCs' service areas.

Because the application also raised far-reaching issues, Mr. Keen suggested that the Commission conduct a general investigation regarding additional ETC designations in RTCs' service areas prior to granting any request for such designation. Specifically, Mr. Keen identified thirteen specific policy issues that he believed should be addressed as part of such proceeding by the Commission. These issues include:

1. What factors should be considered in determining whether the public interest would be served by granting ETC status to multiple carriers in any of Indiana's rural service areas;
2. Whether competitive service options would increase in any meaningful way as a result of granting ETC status to multiple telecommunications carriers in rural service areas;

3. Other states' actual experience after granting ETC status to multiple telecommunications service providers in rural service areas;
4. Initiatives taken in other states to promote or delay the granting of ETC status to multiple providers in rural service areas;
5. Whether any areas in Indiana that are currently served by rural ILECs/ETCs lack access to dependable basic, enhanced, or advanced broadband land-line telecommunication services;
6. Whether any areas in Indiana that are currently served by rural ILECs/ETCs lack access to dependable telecommunications service;
7. Whether Indiana's current ETC qualification requirements are adequate to safeguard the public interest, or whether Indiana should adopt generic guidelines for addressing public interest concerns when multiple Indiana common carriers seek ETC status in rural service areas;
8. The impact of designating multiple ETCs in rural service areas where customers have multiple telephone lines at a given service location;
9. The rates currently charged by Indiana ETCs for unlimited local service;
10. Whether carriers using wireless or other alternative technologies could provide local service with usage levels comparable to landline-based service at comparable and affordable rates;
11. The impact that the designation of multiple ETCs would have on federal universal service surcharges and basic local service rates;
12. The impact that the designation of multiple ETCs in rural service areas would have on state universal service funding levels, assuming a state USF is ultimately created; and
13. Whether the public interest requires more stringent ETC eligibility requirements for rural service areas (e.g., rate review, tariff filing, recordkeeping, reporting, and service quality requirements for wireless carriers).

Mr. Keen indicated that the OUCC envisioned these issues being reviewed and discussed through technical workshops, a process which had been effective in a number of other general Commission investigations and could, in the OUCC's view, be a valuable starting point here as well. If total agreement were not achieved through such technical workshops or settlement negotiations, each party would then have an opportunity to present its positions in prefiled direct and rebuttal testimony, with the opportunity to present evidence and conduct cross-examination

of other parties' witnesses at a public Evidentiary Hearing.

### C. INECA Testimony

The testimony admitted on behalf of INECA was by Bruce Hazelett, president of INECA. Mr. Hazelett suggested that the Commission should undertake its own rigorous review as to whether NPCR had demonstrated that it could comply with the service offerings required of all existing ETCs and comply with Commission oversight and reporting requirements applicable to all the INECA member companies. Mr. Hazelett noted statements of two FCC commissioners to support INECA's view. According to Mr. Hazelett, if the Commission is inclined to take action now, the Commission should make clear that any public interest finding be conditional. In Mr. Hazelett's view, this latter request was reasonable because of the overarching public policy issues being addressed at the federal level regarding federal USF disbursements to second ETCs and because of the potential ramifications of such actions on Indiana-specific commitments to universal service.

Mr. Hazelett explained that a telecommunications carrier must be designated as an ETC by the Commission in order for that entity to be eligible to receive federal USF disbursements, pursuant to §214 of the Federal Act. Mr. Hazelett pointed out that the plain and unambiguous language of Section 214(e)(2) states that the Commission is not required to designate an additional ETC within the service area of an RTC (such as each of the INECA member companies). Moreover, Mr. Hazelett expressed his view that if the Commission were inclined to grant ETC status to an additional entity for an RTC's service area, the Commission was still required to find affirmatively that such designation is "in the public interest." He attached the applicable sections of Section 214 to his testimony for reference to support his assertion that the Federal Act uses the term "shall" with respect to need for any public interest finding.

Mr. Hazelett explained that the service area required for designation purposes is the RTC's "Study Area," since no affirmative action had been taken to establish a different geographic area by the FCC in conjunction with its Joint Board addressing universal service. The term "Study Area," according to Mr. Hazelett, is the entire geographic territory of the specific INECA member company within which it operates and is that which is used for purposes of establishing its federal USF disbursements.

Mr. Hazelett noted that, in addition to the requirement for an affirmative public interest determination, an ETC is also required to demonstrate to the Commission the following:

1. First, the applicant's service must meet nine specific service criteria set forth by the FCC. The service must provide the following: 1) voice grade access to the public switched telephone network; 2) local usage free of charge; 3) dual tone multi-frequency signaling or its equivalent; 4) single party service or its equivalent; 5) access to emergency services, such as 911; 6) access to operator services; 7) access to interexchange service; 8) access to directory assistance; and 9) toll limitation for qualifying low-income customers -- toll limitation or toll restriction and both Lifeline and Link-Up.

2. Second, the applicant must advertise the availability of its service throughout the entire study area of the INECA member company.
3. Third, the applicant must be designated to serve and must offer service throughout the entire Study Area of the RTC.

Mr. Hazelett explained that these were minimum requirements, since state commissions had discretion to adopt additional requirements as a condition of designating a particular applicant as an ETC. He noted that the Federal Act uses the terms "public interest" and the "public interest, convenience and necessity," which were the very same standards that the Commission had traditionally used to ensure that the interests of all consumers within the State of Indiana are advanced. With respect to the necessary public interest finding, Mr. Hazelett recommended that the Commission should consider the impact that the designation will have on the consuming public, on the federal USF, and achievement of the universal service objectives. He expressed INECA's view that no customer of an additional ETC should be subject to a lesser degree of service than that he or she would receive with respect to that provided by an existing ETC (e.g., an INECA member company), and no ETC should receive federal USF unless it abides by the same standards of service quality and consumer protections as the INECA member follows. Mr. Hazelett noted that the Commission should determine whether the applicant provides the nine services, as well as the ability to offer service throughout the entire service area.

Mr. Hazelett did not consider these conditions to be a barrier to entry, as he felt that the Commission clearly takes its commitment to preserving and advancing universal service very seriously and has ensured that its policies are tailored to the concerns that may bear directly on resulting consumer rates. As such, the Commission's oversight of these matters and of the carriers operating within Indiana is necessary, particularly when an entity seeks the responsibility as a "universal service provider" within the rural areas of Indiana. Thus, according to Mr. Hazelett, any election to seek ETC status carries with it the responsibility to comply with all applicable and relevant regulations affecting quality of service and service provisioning within Indiana.

Mr. Hazelett recommended that the Commission should assert its proper regulatory oversight of an ETC, regardless of its status as an ILEC or a wireless service provider, and the assertion of this jurisdiction is not a barrier to entry. Rather, according to Mr. Hazelett, the Commission exercising this jurisdiction would not only be a matter of fundamental fairness between carriers, but was also required to ensure consumers are not without recourse to complain and/or challenge the very basis of service an ETC is properly required to offer. Mr. Hazelett further noted that NPCR had already entered the market and it now seeks the benefits that are derived from being a universal service provider (one of which is the federal USF disbursements.). Such benefit, according to Mr. Hazelett, carries with it responsibilities, especially if an entity elects to seek those benefits. Thus, he concluded that common sense indicates that the approach he suggested for reviewing NPCR's request is no barrier to entry.

Mr. Hazelett also noted that the fact that NPCR utilizes wireless networks for calls is not

relevant to the factual findings and public interest determination that the Commission must make, and it violates the principle of technological neutrality, an additional principle of universal service adopted by the FCC. In Mr. Hazelett's view, technological neutrality demands that all ETCs be held to the same standard regardless of the technology they use.

Mr. Hazelett attached to his testimony all of the responses from NPCR to INECA's interrogatories. He expressed his concern that such responses provided scant information regarding the ETC qualifying criteria that NPCR is obligated to demonstrate, and that, based on those answers, it appeared that the NPCR believed that the Commission should simply "rubber stamp" its application. Such result, according to Mr. Hazelett, was not a position that INECA believed properly reflected the public interest determination required by the Commission.

He noted NPCR's response that it did not have a service offering comparable to the unlimited local calling plan offered by the INECA member companies and that all calls go against all of the plans' "bucket of minutes." Mr. Hazelett noted that "local measured service" ("LMS") was the exception to the rule in Indiana since the INECA member companies offer their universal service package based on unlimited calling and with toll presubscription (which NPCR does not offer). Since NPCR admitted, in Mr. Hazelett's view, that it was providing local exchange service, a substantial question of policy was raised, as this may very well be the first time that the Commission is effectively being asked to agree to the use of LMS by an ETC. Since service parity for consumers was, in Mr. Hazelett's view, a relevant policy consideration for the Commission, this issue could be addressed by requiring the offering and marketing by NPCR of at least one calling plan with unlimited local calling and toll presubscription (*i.e.*, equal access) for a flat monthly fee within a local calling area no smaller than that provided by the RTC. He further suggested that such a condition was permissible, since the FCC required only some amount of local usage to be included in the monthly charge, but had not established the amount of local usage that was required. With respect to toll presubscription, he was not aware of any decisions that would preclude such requirement as a condition for additional ETC status.

The second example Mr. Hazelett provided was based on his position that the ability to offer service also required the ability to terminate its end users' calls, and that capability required that necessary terms and conditions be in place between carriers. Mr. Hazelett supported this position by relying upon the policy established in I.C. 8-1-2-5. Mr. Hazelett indicated that NPCR had stated it had "interconnection arrangements" with only Ameritech and GTE, but NPCR has not stated that it had any arrangements with the INECA companies. Mr. Hazelett also noted that there had been no demonstration that NPCR planned to serve the entire service area of each of the affected INECA member companies.

Third, Mr. Hazelett noted that NPCR indicated that the call drops off once a NPCR customer making a call exits the NPCR network. This result, in Mr. Hazelett's view, raised the factual issue as to whether a NPCR customer actually had a dedicated path for its communications as required by the FCC's rules. Fourth, and in response to INECA's Interrogatory No. 6, NPCR indicated that it used switches in Kentucky (somewhere in Louisville) and in Iowa (somewhere in Des Moines) to provide necessary switching. According to Mr. Hazelett, even if NPCR were to be able to demonstrate its qualifications for ETC status, a

substantial question of fact still existed with respect to how the Commission could assure itself that federal USF disbursements ear-marked for Indiana are spent in Indiana, or how NPCR could certify the same, when at least part of the NPCR network is in different states. Finally, Mr. Hazelett questioned how NPCR could provide operator services since, in response to INECA's Interrogatory Nos. 6 and 8, NPCR stated that access to operator services for some customers was not available until NPRC activated the necessary trunks, but there was no indication by NPCR when these facilities would be placed in service.

In addition to these factual questions, Mr. Hazelett also opined that a substantial question existed as to whether NPCR could sustain its burden to demonstrate that the public interest would be served by granting it additional ETC status. Mr. Hazelett raised this question because, in his view, the only rationale provided by NPCR is that "competition" would be advanced. However, Mr. Hazelett noted that NPCR's purported public interest showing rested on the proposition that designating additional ETCs in an RTC's study area somehow created new competition and that competition presumably leads to beneficial competitive marketplace effects. According to Mr. Hazelett, these arguments substantially negated any meaningful application of the public interest test contained in Section 214(e)(2) of the Act. If merely increasing competition were enough to satisfy the public interest test, Congress' limitation on the designation of additional ETCs in RTCs' study areas was, in his view, an "empty" directive. Mr. Hazelett indicated that, if NPCR was correct, Congress would have applied the same ETC designation standard to both rural and non-rural areas under Section 214(e)(2), which it did not. Therefore, the automatic conclusion that competition, in and of itself, satisfied Section 214(e)(2)'s "public interest" requirements would essentially write the public interest provision for RTC areas out of the Act. Thus, in Mr. Hazelett's view, it only seemed reasonable that in adopting the public interest test and delegating to states the discretion to determine whether and how many ETCs to designate in RTCs' study areas, Congress recognized that it does not always make sense to designate additional ETCs in such areas. In addition, Mr. Hazelett noted that the "competition" theory offered by NPCR is factually suspect, as it had nothing to do with the services that the INECA member companies offer, and that service was already being offered by NPCR.

Mr. Hazelett also disagreed with the suggestion by Mr. Wood that INECA was attempting to make this case "about competition," as this suffered from the same misassumption included in Mr. Peabody's testimony, that the competition between mobile providers and/or competition for toll traffic (*i.e.*, "expanded local calling") is sufficient to sustain NPCR's burden regarding its Section 214(e)(2) public interest demonstration.

Mr. Hazelett believed that NPCR had failed to meet its burden of demonstrating that it offered the services required of ETCs. Moreover, Mr. Hazelett suggested that the scant factual information provided by NPCR, coupled with the apparent disregard for the proper oversight by the Commission of any universal service provider within the State of Indiana, raises substantial and serious questions regarding the ability of the Commission to make any public interest finding. While he recognized that the Commission could, in its discretion, conduct its own rigorous review in order to develop a factual record upon which such findings can be made, Mr. Hazelett stated that in INECA's view such factual record did not currently exist. He also

indicated that INECA would support the type of general investigation that the OUCC had suggested in the Cause addressing the application of the Centennial Companies for additional ETC status.

Although Mr. Hazelett recognized that under current FCC rules, the INECA member companies would not be financially affected by the Commission granting NPCR's request, he indicated that INECA believed that the Commission was still required to provide a proper foundation for its determinations regarding second ETCs within an RTC's service area, and require a demonstration by the applicant of compliance with the same principles, obligations, and service offerings that the INECA member companies were required to make. This parallelism, according to Mr. Hazelett, ensures not only that all universal service providers in rural areas of Indiana are held accountable for the offerings they make, but it would also ensure fundamental fairness and acceptance of the responsibilities that go hand-in-hand with the title of ETC within rural areas of Indiana. This result, according to Mr. Hazelett, was important because there is an on-going public policy debate at the federal level regarding the federal universal service mechanism and USF disbursements being made to second ETCs. According to Mr. Hazelett, the overarching issue is whether the concept of second ETCs within a rural, higher cost to serve area (such as those served by RTCs) makes rational sense. The debate (according to Mr. Hazelett) continues with asking whether it was fundamentally fair to allow second ETCs to receive disbursements without a cost-based showing (such as the incumbent RTC telephone companies provide) and the resulting adverse impact that such policy had on the overall size of the federal USF. Mr. Hazelett noted that the size of the federal USF raised thorny issues associated with the amount of funding that must be generated to ensure that proper levels of USF funding are available for disbursement, and the push back created by carriers required to fund that amount. According to Mr. Hazelett, among the changes in the federal USF that are being discussed are rule modifications that would require state responsibility for USF funding to additional ETCs in areas served by RTCs. These issues, in Mr. Hazelett's view, only highlighted the on-going federal debate, and demonstrated why any decision made in this proceeding must reflect the unsettled nature of the current federal USF debate.

Mr. Hazelett requested that any public interest determination that would provide the basis for granting NPCR's request be made conditionally, so that the Commission could revisit it. Mr. Hazelett indicated that such approach was consistent with the Commission's desire to ensure that its policies are sufficiently flexible to accommodate future regulatory changes, as well as the discretion provided to it under the Federal Act in the event that applicable rules governing designation and funding of ETCs are modified.

#### **D. CCRTC Testimony**

CCRTC offered the pre-filed testimony of Bradley W. Welp, the company's General Manager. Mr. Welp testified regarding the size of CCRTC in terms of access lines compared to larger carriers in the State. Additionally, Mr. Welp testified that CCRTC currently received \$83.5029 per access line in Federal USF Support. Mr. Welp also testified about CCRTC's plant and the rates it charges its customers which are, depending on the exchange, \$16.50 per month or \$10.75 per month, before various additives. Mr. Welp also testified that CCRTC's customers have access to advanced telecommunications services and that the company provides voice

service which meets or exceeds the Commission's service quality standards. He testified that adding ETCs will raise the size of the Federal USF and will increase the cost to CCRTC's member-customers. Additionally, Mr. Welp testified that it is possible for NPCR to refuse service to a potential customer if the request is not "reasonable." Mr. Welp testified that CCRTC provides service to each customer who requests service in CCRTC's service territory. He also testified that NPCR has not shown that customers in CCRTC's territory will enjoy improved service at lower rates if NPCR is granted ETC-status.

#### **E. NPCR Rebuttal Testimony**

Mr. Peabody filed rebuttal testimony to that provided by INECA, the OUCC and CCRTC. Mr. Peabody noted that, contrary to the testimony of INECA and OUCC, NPCR can provide the FCC's list of universal services in the areas in which it has requested designation, as well as satisfy all other ETC obligations. Mr. Peabody also testified that most of CCRTC's criticism of NPCR was based on the differences between the service offerings of NPCR and CCRTC and the differing technology, regulatory structures, and market dynamics confronting NPCR as compared to CCRTC. Mr. Peabody also testified that the FCC's rules contemplate such differences and the FCC has clearly stated that such a consideration cannot be held against it. In his view, Mr. Peabody suggested that CCRTC seeks to undermine the concept of competitive neutrality.

Mr. Peabody suggested that the other parties "rely on irrelevant and misguided arguments" in challenging the notion that NPCR's request would not serve the public interest. Mr. Peabody reiterated his view that rural customers are entitled to the full benefits of wireless service even though they live in areas that are costly to serve, and that the consumers, not LEC witnesses, should determine "whether a particular service offering is affordable or of 'high quality.'" Mr. Peabody stated that allowing NPCR to have access to federal universal service funding will, in the long run, provide consumers in small and rural markets with access to high quality services at comparable rates.

With respect to challenges regarding the provision of the FCC list of universal services, Mr. Peabody suggested that the "attack" is with respect to the amount of local usage included within NPCR's offerings. In response, Mr. Peabody restated his prior testimony that the FCC has not set a standard for minutes of use and, more recently, that unlimited usage should not be included within the core universal service elements. Thus, NPCR is in compliance, according to Mr. Peabody, since each package has a minute of use component built in and one offering is unlimited.

Mr. Peabody stated that NPCR provides single party service even though a customer may drop off the network when it is beyond the range of a NPCR tower. In Mr. Peabody's opinion, the FCC requirement addresses the length of the customer's transmission over a dedicated message path and when the transmission ends there is, by definition, no message path. As to access to operator services, Mr. Peabody indicated that the necessary trunking arrangements allowing access to operator services have now been activated for Indiana customers. With respect to equal access and INECA's suggestion of service parity, Mr. Peabody stated that the FCC recently ruled that equal access is not a supported service for the purposes of USF.

Mr. Peabody also challenged INECA's concerns regarding the ability for NPCR to lawfully terminate traffic to the INECA companies, since the agreements in place are only between NPCR and Ameritech and GTE. Mr. Peabody stated that its arrangements are with tandem operators and that these arrangements offer LATA-wide termination.

Mr. Peabody next addressed what he characterizes as "service area" issues. Mr. Peabody stated that NPCR licenses cover all of the affected RTCs' Study Areas and that the FCC does not require NPCR to serve every customer throughout a study area at the time of designation. With respect to concerns regarding what a "reasonable request" for service is, Mr. Peabody noted that some requests may simply require the offering to the customer of a handset while the need to erect a tower to serve a customer would be unreasonable.

Mr. Peabody also stated that the FCC has concluded that federal USF funding levels are for it and the Joint Board to decide, not the Commission. Mr. Peabody rejected the concerns raised by INECA regarding the public interest analysis provided by NPCR, noting that its rationale included more than simply competition. Mr. Peabody stated that the appropriate inquiry is whether there is anything about these RTC areas that justifies refusing to provide those customers the full benefits of competition promised by Congress. Mr. Peabody noted that NPCR wants to utilize and expand its infrastructure, and that action provides greater innovation and service incentives to LECs. Mr. Peabody stated that the OUCC's concerns regarding NPCR's compliance with LEC requirements were a "red herring," since there are differences in service offerings, and that is not relevant to ETC designations. Similar expressions were made by Mr. Peabody with respect to CCRTC, stating that NPCR's designation as an ETC has been shown to "advance competition, improve services, and expand the availability of universal service."

Mr. Peabody concluded that the FCC has made clear that the public interest determination "should examine whether consumer benefits from designation outweigh demonstrated adverse impacts on consumers" and access to federal USF monies is required to ensure a level playing field. With respect to consumer benefits, Mr. Peabody referenced NPCR's expanded local calling areas and nationwide calling, as well services outside the core list of universal service such as Internet, email and text messaging. Mr. Peabody reiterated prior testimony regarding the quality of NPCR's service, and benefits from competition as a basis for the Commission to find that the public interest would be served by granting NPCR's ETC application.

Mr. Wood's rebuttal offered similar responses to the other parties' testimony. Characterizing the positions of INECA and CCRTC as "well worn arguments," he suggested that neither of these parties has presented fact or sound policy for their positions and that state regulators and the FCC have rejected their positions. Mr. Wood contended that the parties were seeking to "re-litigate" FCC decisions and asking the Commission to "ignore" portions of the FCC's May, 2001 USF decision. According to Mr. Wood, the relevant inquiry is whether NPCR offers "services that provide benefits to consumers" and whether there is "some issue fact or issue that is specific to [NPCR], or to the service areas within which it seeks an ETC designation in Indiana, that would outweigh those benefits."

With respect to factual questions, Mr. Wood suggested that the issues raised are based on speculation or factual assertions that have no bearing on the issues before the Commission. Mr. Wood noted that NPCR is seeking to invest in technology and facilities to provide competitive services. Mr. Wood also challenged INECA's suggestion regarding the scope of this proceeding, arguing that the "overarching issue" is not the size of the fund but rather whether the "existing mechanism encourages inefficient entry in the highest cost areas." Mr. Wood also disagreed with INECA's position that "service parity" is a relevant consideration, since competitive markets result in different service offerings, allowing carriers to tailor consumer offerings to the identified need. According to Mr. Wood, INECA's suggested service parity does just the opposite. With respect to service parity, Mr. Wood disagreed with the INECA position regarding the distinction between landline and mobile services in that NPCR wants to offer a service that directly competes with the landline offering. Similar challenges were made by Mr. Wood to CCRTC, suggesting that CCRTC's position forgets the fact that LECs have had many years to construct their networks with USF monies, and NPCR wants the same opportunity. If given this opportunity, according to Mr. Wood, NPCR would be a direct competitor of the LEC.

With respect to CCRTC's position regarding the level of NPCR's rates, Mr. Wood noted that if there is a concern regarding such levels, then customers will not purchase NPCR's service and no USF will be available to NPCR. But, according to Mr. Wood, CCRTC's view addressed only short run considerations because designating NPCR as an additional ETC would create incentives for efficiencies, thus leading to lower prices over time. In Mr. Wood's opinion, using USF monies to construct infrastructure rather than offset rates encouraged this result. Finally, Mr. Wood suggested that the price comparison that CCRTC is providing is not an "apples-to-apples" comparison and, in any event, if the prices of NPCR's services are too high, there should be no reason not to designate NPCR as an ETC because it would not be a "competitive threat" to CCRTC.

With respect to quality of service issues, Mr. Wood stated that the issues are moot because customers would not choose NPCR's service if the price were too high or service quality low, thereby not allowing NPCR to receive federal USF monies. Thus, according to Mr. Wood, the current process allows the marketplace to "sort out these issues," with the consumer being the ultimate decision maker. Mr. Wood stated that no additional requirements need be imposed on NPCR than those it meets today. Mr. Wood argued that INECA's "parity" position regarding unlimited calling should be rejected because NPCR should not be "criticized" for "offering services with a rate structure that permits customers to buy only what they need and that reflects the underlying costs to provide the functionality."

As to the size of the federal USF, Mr. Wood did not believe that such concerns were related to the instant application, and are being addressed by the FCC and Joint Board. Mr. Wood stated that while a smaller fund may be preferable, the growth in the size of the federal USF was considered by the FCC and fully recognized. Moreover, certain aspects of the federal USF (such as indexed caps) minimized growth. He also noted that the fund size is related to the use of embedded costs for calculating the high cost loop levels of federal USF disbursements rather than forward-looking costs. Similarly, the FCC's decisions regarding USF "portability" result in an increased size of the USF and to suggest that "best means of limiting growth of the

fund is to deny applications by competitive carriers for ETC status is disingenuous at best" since these policies were adopted based on the requests of RTCs. Characterizing "assurances of cost recovery in rural areas" as a "gift from the FCC" not present in a competitive market, Mr. Wood recognized that the "transition mechanism" is costly in the short term but it "can gradually wean the incumbent rural LECs over the period of time that it is in effect."

Mr. Wood characterized INECA's observation regarding state participation in the federal USF funding process as a "scare tactic." He stated that, based on his experience and participation in the process, no serious discussion of such outcome is taking place. Even though NPCR is providing service today, Mr. Wood noted that NPCR is committing to the ability to provide universal service, something it could not do absent federal USF disbursements. Mr. Wood stated that withholding federal USF monies to NPCR would not reflect how rural LECs constructed their networks over time and "even now, ILECs that have been providing service for over a century do not have ubiquitous networks." Consequently, the approach sought by NPCR was not fundamentally different, according to Mr. Wood.

With respect to utilizing the federal USF monies in Indiana, Mr. Wood stated that this issue is not of concern since the Universal Service Administrative Company ("USAC") has responsibility for fund distributions as well as auditing powers, the Commission has the ability to monitor this issue in its annual certification process, and the FCC has the authority to impose its own measures upon wireless licensees such as NPCR. Similarly, considerations regarding the need for cost-based showings by additional ETCs are not necessary, since the FCC and Joint Board are looking into this issue. If the concern is that the wireless provider has a lower cost structure than the LEC, according to Mr. Wood, that concern has "no validity from a public interest standpoint" because that advantage is not created by the USF portability rules and any advantage would "only encourage accelerated deployment of network facilities by the more efficient provider." Thus, Mr. Wood criticized INECA's concern by not explaining why the public interest would be served by "discouraging investment by a more efficient provider while encouraging investment by a less efficient provider." Mr. Wood also cited several public policy questions that he suggested highlight his concerns.

Why is it in the public interest for wireline carriers to serve these geographic areas at all? . . . . Why is it in the public interest to delay network deployment for the more efficient carrier? Why is it in the public interest to support, into perpetuity, the network of the less efficient carrier? Why should the designation of [NPCR] (one of those potentially lower cost providers) as an ETC be postponed while these conceptual issues are being debated in another forum? .

...

For similar reasons, Mr. Wood disagreed with CCRTC's statements regarding non-cost based showings, suggesting that concerns regarding "cream skimming" have already been addressed by the FCC, and that CCRTC was given the ability to disaggregate its federal USF disbursements if it so chose. Finally, Mr. Wood disagreed with INECA's suggestion that the public interest finding be made "conditional" since, according to Mr. Wood, the "proper course of action in this case is to apply the law as it exists today" and he expected that if changes in the

federal USF process would be made, the FCC would, in any event, "undoubtedly provide guidance for the treatment of existing ETC designations."

Mr. Wood then responded to the OUCC concerns. First, Mr. Wood believed that costs of an ILEC would be avoided, and thus concerns over increased per-line cost levels may be overstated where the LEC loses customers to an additional ETC. Second, with respect to concerns that service is being provided by NPCR without USF disbursements, Mr. Wood noted that the objective is to allow NPCR to build out its network as the LECs have done, and, like the LECs, federal USF monies are important to allow this to occur. With respect to complying with existing service quality rules, Mr. Wood suggested that such rules are "not technology neutral," "may create artificial barriers to entry," and otherwise can be left to the marketplace to sort out. Finally, with respect to the OUCC's concern regarding the growth of the federal USF, he stated that the issue is not primarily caused by the designation of additional ETCs, and cannot be effectively addressed by lowering levels of federal USF disbursements to additional ETCs. In addition, the fund growth cannot be remedied by not designating more ETCs, but rather through changes in how the per-line disbursements are made.

#### 5. Commission Findings.

The evidence in the record establishes that NPCR meets the eligibility criteria for ETC designation as contained in Section 214(e)(1), as set out more fully below.

##### A. **Petitioner is a Common Carrier**

The first requirement for ETC designation is status as a common carrier under federal law. A "common carrier" is generally defined in 47 U.S.C. § 153(10) as a person engaged as a common carrier on a for-hire basis in interstate communications utilizing either wire or radio technology. The FCC's regulations specifically provide that a specialized mobile radio service, such as that provided by NPCR, is a common carrier service. See 47 C.F.R. § 20.9(a)(4). NPCR is therefore a "common carrier" for purposes of obtaining ETC designation under 47 U.S.C. § 214(e)(1). (Pet. Ex. 3, p. 6.)

##### B. **Petitioner Provides Each of the FCC's Supported Services**

The record evidence confirms that NPCR's network can provide each of the supported services required of an ETC, and NPCR will offer all of those services to its universal service customers once designated an ETC. (Pet. Ex. 3, p. 7.)

i. Voice-grade access to the public switched telephone network. The FCC concluded that voice-grade access means the ability to make and receive phone calls, within the 300 to 3000 Hertz frequency range. 47 C.F.R. § 52.101(a)(1). Through its interconnection arrangements with local telephone companies, including Ameritech and GTE, all Indiana customers of NPCR are able to make and receive calls on the public switched network within the FCC's specified bandwidth. (Pet. Ex. 3, pp. 7-8.)

ii. Local usage. Beyond providing access to the public switched network, an ETC must include an amount of free local usage determined by the FCC as part of a

universal service offering. 47 C.F.R. § 54.101(a)(2). The FCC has not quantified a minimum amount of local usage required to be included in a universal service offering, and has declined to require that ETCs offer unlimited local usage.<sup>1</sup> NPCR will include local usage in its universal service offerings. (Pet. Ex. 3, p. 8.)

iii. Dual-tone, multi-frequency ("DTMF") signaling, or its functional equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. Consistent with the principles of competitive and technological neutrality, carriers that provide signaling that is functionally equivalent to DTMF meet this service requirement. 47 C.F.R. § 54.101(a)(3). NPCR uses out-of-band digital signaling and in-band multi-frequency ("MF") signaling that is functionally equivalent to DTMF signaling. (Pet. Ex. 3, p. 8.)

iv. Single-party service or its functional equivalent. "Single-party service" means that only one party will be served by a subscriber loop or access line, in contrast to a multi-party line. 47 C.F.R. § 54.101(a)(4). *Universal Service Order*, ¶ 62. NPCR meets this requirement by providing a dedicated message path for the length of all customer calls. Although INECA witness Hazelett questioned whether NPCR provided this supported service (INECA Ex. 1, p. 8), Mr. Hazelett admitted on cross-examination that NPCR provides a dedicated message path in compliance with 47 C.F.R. § 54.101(a)(4). (Tr. 180.)

v. Access to emergency services. The ability to reach a public safety answering point ("PSAP") by dialing 911 is a required service in any universal service offering. Enhanced 911 or E911, which includes the capability of providing both automatic numbering information ("ANI") and automatic location information ("ALI"), is only required if a PSAP is capable of receiving and utilizing such information, and requests the delivery of such information from a wireless provider. *Universal Service Order*, ¶¶ 72-73. The record reflects that NPCR currently provides all of its customers with access to emergency services by dialing 911 in satisfaction of this requirement. (Pet. Ex. 3, p. 9.) In addition, NPCR has deployed Phase I and Phase II E911 service requests from 17 PSAPs. (Pet. Ex. 3, p. 9.) NPCR is required to continue to implement Phase I and Phase II E911 requests in accordance with FCC rules.

vi. Access to operator services. Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. 47 C.F.R. § 54.101(a)(6). *Universal Service Order*, ¶ 75. NPCR demonstrated it meets this requirement by providing all of its customers with access to operator services provided by either the Petitioner or other entities (e.g. LECs, IXC's, etc.). (Pet. Ex. 3, pp. 9-10; Pet. Ex. 5, p. 7.)

vii. Access to interexchange service. A universal service provider must offer consumers access to interexchange service to make and receive interexchange calls. 47

<sup>1</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order and Order on Reconsideration, FCC 03-170, ¶ 14 (rel. July 14, 2003) ("July 2003 Order").

C.F.R. § 54.101(a)(7). NPCR presently meets this requirement by providing all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements the Company has with several interexchange carriers (IXCs). (Pet. Ex. 3, p. 10.) NPCR does not offer equal access to other interexchange carriers, but this is a requirement that the FCC has declined to require of ETCs. Despite requests by intervenors in this case, we decline to add it as a requirement.

viii. Access to directory assistance. The ability to place a call directly to directory assistance is a required service offering. 47 C.F.R. § 54.101(a)(8). NPCR meets this requirement by providing all of its customers with access to directory assistance by dialing "411." (Pet. Ex. 3, p. 10.)

ix. Toll limitation for qualifying low income consumers. An ETC must offer toll limitation services to qualifying Lifeline customers at no charge. 47 C.F.R. § 54.101(a)(9). "Toll limitation" is defined as "toll blocking" or "toll control" if a carrier is incapable of offering both, but as both "toll blocking" and "toll control" if a carrier can provide both. 47 C.F.R. § 54.400(d). NPCR is unable, at this time, to provide "toll control." The Company can and will offer "toll blocking" to its Lifeline customers, at no charge, as part of its universal service offerings. (Pet. Ex. 3, p. 10.)

#### **C. Petitioner Will Satisfy Advertising Requirements**

The third requirement for ETC designation is that a carrier agrees to advertise the availability of the supported services and charges using media of general distribution. 47 U.S.C. § 214(e)(1). To date, neither the FCC nor this Commission has adopted any specific advertising guidelines for any ETC.<sup>2</sup> NPCR presented evidence that the Nextel brand name is currently advertised nationwide by NPCR and Nextel Communications, and that its 2002 advertising costs totaled approximately \$35.1 million. (Pet. Ex. 3, p. 13.) No party challenged NPCR's evidence that it can and will advertise through media of general distribution as required by law.

#### **D. Petitioner's Designated ETC Service Areas**

Although NPCR presented different evidence as to its proposed ETC service areas, its late filed revised Exhibit 7 is Petitioner's final statement of the area included in its proposed Indiana ETC service territory and the areas in which it will advertise the supported services if its request for ETC status is granted. 47 U.S.C. § 214(e)(1). Section 214(e)(5) of the Act defines the term "service area" as a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5). For an area served by a rural telephone company, 47 U.S.C. § 214(e)(5) provides that the term "service area" means the rural telephone company's "study area," unless and until the FCC and a state commission establish different service areas under the procedures set forth in 47 C.F.R. § 54.207(c)-(d). For an area served by a non-rural LEC, there is no "study area" requirement, so an ETC's designated service area can be established on a wire center basis. 47 U.S.C. § 214(e)(5).

<sup>2</sup> *Universal Service Order*, ¶ 148.

Petitioner's Exhibit 7 (Late Filed Revised) eliminated four rural LEC areas currently served by CCRTC from its proposed ETC service territory. NPCR indicated that it is licensed to provide service throughout all rural LEC study areas and non-rural LEC wire centers identified in the service areas shown on Petitioner's Exhibit 7 (Late Filed Revised).

Although NPCR's current coverage does not today extend throughout all of the areas in which it requests designation (*see* Pet. Ex. 3, Ex. SP-2), the FCC has held that an ETC applicant is not required to provide ubiquitous service at the time of its application, but instead must be given time to extend its network based on consumer requests.<sup>3</sup> NPCR's witness, Mr. Peabody, testified that with access to universal service support the NPCR would be able to build-out its Indiana network to better serve rural consumers. (Tr. 51.) NPCR's evidence demonstrated an intent and ability to provide service as an ETC, and to respond to reasonable requests for service as required by the FCC, in the areas identified on Petitioner's Exhibit 7 (Late Filed Revised).

#### **E. Commission Factors of Consideration**

We begin with our finding, which is that granting NPCR's petition is in the public interest. Numerous factors were taken into account, and we enumerate them here so that we may provide the requisite road map for subsequent applicants, as well as showing the support for our ultimate finding.

##### **a. Public interest analysis under 47 U.S.C. § 214(e)(2) for CETC designation in Specified Rural Service Areas**

To guarantee universal service, TA '96 required that all telecommunications carriers contribute into a Universal Service Fund ("USF") on an equitable and nondiscriminatory basis. 47 U.S.C. §254(f). This fund is used to act as a counterbalance for those carriers entering traditionally high cost areas, such as rural or insular areas. "Universal service contributions...support[] the expansion of, and increased access to, the public institutional telecommunications network." *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 427 (5<sup>th</sup> Cir. 1999) ("TOPUC"). The designation of an ETC provides the public with the certainty that there will be a carrier of last resort that provides services determined to be necessary. 47 U.S.C. §214. ETCs are required, at the risk of sanctions, to provide service to designated customers at affordable prices. 47 U.S.C. §214(d); *see also* *In re the Filing by GCC License Corp.*, 623 N.W.2d 474, 477 (S.D. 2001.)

In areas served by rural telephone companies, a competitive ETC can be designated only upon a finding that the designation will serve the public interest. 47 U.S.C. § 214(e)(2). Congress did not define or limit states' public interest tests under Section 214(e)(2), leaving it to

<sup>3</sup> *See In the Matter of Federal-State Joint Board on Universal Service – Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket 96-45, FCC 00-248, ¶ 17 (rel. Aug. 10, 2000) ("[A] telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC.").

the states to set their own parameters for public interest analyses for rural service areas, consistent with the underlying purposes of the Act, namely:

To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

Pub. L. No. 104-104, 110 Stat. 56 (1996).

47 U.S.C. §254(b) sets out the standards under which we must examine whether or not granting NPCR ETC status would be in the public interest. Section 254(b)(3) of the Act provides that rural consumers should have access to services that are comparable to those available in urban areas:

Consumers in rural, insular, and high cost areas should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Apart from the promotion of competition, there has been no citation to any authority showing that there is a limitation on the factors that the Commission may take into account when making a public interest determination. *WWC Holding Co., Inc. v. Public Service Commission*, 442 Utah Adv. Rep. 8, 44 P.3d 714, 719 (2002). Under Section 214(e) of TA '96, the Commission is given the discretion of how many carriers to designate within a given area, but is not prohibited from imposing its own eligibility requirements. *TOPUC*, 183 F.3d at 418. This is consistent with the historical role states play in guaranteeing service quality standards for local service. *Id.* When a carrier applies to be an ETC, it should expect that the state commission will carefully scrutinize its petition. As the Joint Board has noted,

While a carrier need not actually provide the nine services required of ETCs at the time of application, they must make a case for how they will provide them, if they are unable to do so at the time. A new entrant can make a reasonable demonstration to the state commission of its capability and commitment to provide universal service without the actual provision of the proposed service. There are several possible methods for doing so, including, but not limited to: (1) a description of the proposed service technology, as supported by appropriate submissions; (2) a demonstration of the extent to which the carrier may otherwise be providing telecommunications within the state; (3) a description of the extent to which the carrier has entered into interconnection and resale agreements; or (4) a sworn affidavit signed by a representative of the carrier to assure compliance with the obligation to offer and advertise the supported services.

*In the Matter of Federal-State Joint Board on Universal Service*, 15 FCC Rcd 15168, 15178 (2000) (footnotes omitted); accord, *In the Matter of Federal-State Joint Board on Universal Service*, 17 FCC Rcd 23532, 23539 (2002); *GCC License Corp.*, 623 N.W. 2d at 481.

State commissions are granted the authority to make the designation because of a unique awareness of states' needs and problems. What is examined, however, is dependant upon the duty to the public. "[C]ustomers' interest, not competitors', should control agencies' decisions affecting universal service." *Washington Independent Telephone Assn. v. Washington Utilities and Transportation Comm.*, 110 Wn. 498, 41 P.3d 1212, 1218 (2002). "Public interest is a broad concept encompassing the welfare of present and future consumers, stakeholders, and the general public. The 'public interest' is broader than the goal of competition alone...[and] broader than the goal of advancing universal service." *Washington Independent Telephone Assn. v. Washington Utilities and Transportation Comm.*, 149 Wn.2d 17, 27, 65 P.3d 319, 324 n.3 (2003) (citations omitted.)

In addition, 47 U.S.C. §253(b) allows states to impose requirements on the provision of telecommunications services that are necessary to preserve universal service, protect public safety and welfare, ensure the continued quality of services, and protect the rights of consumers. *In the Matter of Federal-State Joint Board on Universal Service*, 15 FCC Rcd at 15176. This authority, however, is tempered by the requirement that such regulation be competitively neutral. *Id.* While there is the mandate that the State's additional regulations not be inconsistent with the FCC's rules, the statute contemplates additional state regulation that adopts "additional specific, predictable, and sufficient mechanisms" to preserve and advance universal service. 47 U.S.C. §254(f).

Given these explicit statutory mandates, it is clear that Congress intended that state commissions were to play a critical and necessary role in the determination of successor ETCs in rural areas. We intend to honor our obligation, and set out such factors as may guide ETC applicants in the future in making their filings. We turn, then, to the particulars supporting a finding that the designation of NPCR as an ETC is in the public interest.

NPCR's witnesses testified that access to federal universal service funding will allow NPCR to continue to extend its network throughout the state, and this network infrastructure will continue to be available to provide universal and advanced services to rural consumers in Indiana. NPCR's witness Mr. Peabody indicated that it appeared that a "minimal" extension of the network was already anticipated to improve service, and that if ETC status was granted, capital outlay plans could be formulated "in a few days." Tr. at 51. Further, Mr. Peabody testified that even relatively minor investments could improve service area reliability and increase a cell tower's footprint, such as the installation of new coaxial cable on a tower. Tr. at 52. Mr. Peabody recognized that such an extension of service is "the right thing to do" if NPCR is given ETC status, to assist consumers with emergency coverage and provide rural coverage. *Id.* at 52-53.

NPCR currently provides GPS location assistance for customers dialing 911 where requested by a PSAP. As NPCR continues to expand its network in Indiana this network infrastructure will be available to provide basic and enhanced services to its customers. (Pet. Ex. 3, p. 16.) Expansion of the network to provide ubiquitous coverage in Indiana rural areas is in the public interest, as cell phones for farmers become the ideal way to communicate from the "north forty."

NPCR presented evidence that its system also provides customers with the ability to roam nationwide on the Nextel network without having to pay any roaming fees, although its roaming capabilities are limited, in that they are only able to function with other Nextel equipment. Tr. at 103-104. In addition, NPCR provides larger local calling areas, nationwide long distance in some plans, its Direct ConnectSM walkie-talkie service, and mobile E911. (Pet. Ex. 3, p. 16.) NPCR explained that universal service funding is necessary for continued network build-out and expansion in Indiana in order to achieve the same levels of service in rural study areas as Nextel currently offers in urban wire centers. Tr. at 51. NPCR's witness, Mr. Wood, testified that these build-out decisions bring not only universal service funds, but also access to additional private capital that may not otherwise be economically justified. (Pet. Ex. 4, p. 11.)<sup>4</sup>

In discussing the various factors inherent in wireline vs. wireline carriers, NPCR witness Wood noted mobility as a positive aspect of wireless service. Tr. at 145-46. This was contrasted with the service quality advantage of wireline, nonetheless limited by its distance from the end of the wire.<sup>5</sup> *Id.* We favor an approach that places the issue of mobility of service in the context of one of many factors to be considered in the issue of determining ETC status. Further, the arguments in favor of competition, choice, mobility, and a larger local calling area are not supported by a showing that these factors are, per se, determinative in showing that ETC status is in the public interest. *WWC, supra*, 44 P.3d at 721. This is consistent with the mandate of 47 U.S.C. 253(b) that State regulation be administered in a competitively neutral fashion. To hold otherwise would have the effect of deeming wireline carriers "worse" because they lack mobility, or have a smaller calling area. The mandate of competitive neutrality requires an inquiry into whether a requirement imposed upon applicants – whether incumbents or competitors, wireline or wireless – has a competitively neutral effect. *In the Matter of Federal-State Joint Board on Universal Service*, 15 FCC Rcd at 15177. Therefore, for the Commission to remain competitively neutral on the designation of subsequent ETCs in rural areas, we must refrain from declaring a particular feature of a technology "better." The features of a particular system, regardless of wireline or wireless, must be presented in the context of how it serves the public interest.

Further, as NPCR points out, wireline carriers did not build out their system overnight, but did so over an extended period of time, while receiving both explicit and implicit subsidies. Tr. at 146. For us to decline to support wireless carriers in a similar fashion would violate the mandate of technological neutrality. NPCR committed, through its testimony and evidence, to increase service quality and extend its network so that "consumers [can] have substitute services[.]" Tr. at 146.

NPCR offered evidence that the funds collected by the designation of wireless CETCs is so small compared to ILEC funding that removing all wireless CETCs would not change the surcharge. (Tr. 120.) However, NPCR is wrong in its assertion that the Commission should not

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<sup>4</sup> Mr. Wood testified: "In my experience, \$1 in USF support typically generates an additional \$3-\$5 in private capital." (Pet. Ex. 4, p. 11 n.10.)

<sup>5</sup> On re-direct, Mr. Wood stated that the NPCR technology produced an "extremely clear" voice quality, and that he meant that the ILECs had had a significant amount of time and support in which to create a quality network, which NPCR had not. Tr. at 158-59.

focus on the impact to the fund. Tr. at 119. The issue of the size of, and impact to, the universal service fund must be placed in context based on the proposed amount of funds flowing into the state. These are among a number of factors to be viewed by a State commission in making a public interest determination. NPCR does correctly assert that denial of a CETC petition is not the way to change the amount paid by consumers, but a change to the pricing base is. Tr. at 123. NPCR proffered this testimony when defending its designation's potential effect on the USF passed on to customers:

[D]eal[] with the contribution base...by dealing with economic versus embedded versus modified embedded cost recovery, you cannot impact that contribution factor to any significant decimal place by denying individual ETC designation [sic], CETC designation, or all ETC designations collectively...ETCs are currently receiving...less than 6 percent of the high cost funds, which would be less than 30 percent of the total fund. The remainder would be to ILECs. Wireless ETCs are receiving less than half of what's going to all CETCs. There is no way in the decimal places to which all of these calculations are carried out, what we'd call significant digits, to have an impact from CETC designations based on fourth quarter '03 projections.

Testimony of Don Wood, Tr. at 121-22.

This testimony represents the analysis the Commission expects in defense of an ETC petition. Applicants must be able to answer how, and in what terms, its presence as an ETC will affect the market as a whole, and the public interest generally. Mere defensive posturing does nothing to illuminate the Commission on the impact of a designation. Throwing up the Commission's lack of jurisdiction, for example, over the rates and entry of wireless carriers, is reflexive and ultimately non-productive. As NPCR correctly pointed out, current USF support is not based on actual per line need or cost, but on the modified embedded cost per line of the ILEC. Tr. at 124. To the extent that this represents an artificial construct that does not accurately reflect NPCR's costs (or that of any other wireless CETC applicant), it is not a factor over which NPCR has ultimate control, beyond filing comment with the FCC. It should, however, and has done so in this case, present evidence of what impact its designation may have.

NPCR has committed to expansion of coverage in the designated areas, seeking to make its service ubiquitous. In addition, it has examined its network sufficiently to present to the Commission those factors which it needs to improve, and in which areas it will focus. These details, as well as additional factors upon which we will expand more below, show that NPCR is approaching its potential ETC obligations with the requisite thoroughness and solemnity. These factors have convinced us that their petition should be granted.

#### **b. Network infirmities**

The premise of universal service contains within it recognition of network infirmities. But for those infirmities, the concept of universal service would be unnecessary. Hence, in an examination of an ETC designation request, an applicant must make specific offerings of proof as to how it will remedy any infirmities it may have identified in its system, or show how it will improve existing service with the USF funds it seeks.

NPCR asserts that the Commission has no jurisdiction over it in regard to service quality standards. From a public policy and public interest stand point, the certification of an ETC – designed to be, as necessary, the carrier of last resort – presents an assurance to the public that service will be universal, as promised. A carrier must show that system infirmities will be remedied, as subscribers could well find themselves without service at dire times. For example, the FCC has noted that the ability to call for and receive help in an emergency is the overarching reason for purchasing a wireless phone.<sup>6</sup> NPCR's witness showed his recognition of this precept in the following testimony:

That's, in fact, why this proceeding is so important, because the company's providing some services in some portions of these areas but does not have the opportunity absent USF Funding to make the service available at high quality ubiquitously through the area so that the customer sees that as a substitute for his basic telephone service.

Testimony of Don Wood, Tr. at 133-34.

In recognition of its' coverage "dead spots," NPCR has appropriately assured the Commission that such gaps in coverage will be filled if it is granted ETC status.<sup>7</sup> While service is presumed in dead spots under FCC regulations<sup>8</sup>, if the Commission is aware of them, they may certainly take notice of them and consider them in the context of a prospective ETC's application. Requiring this of an ETC is consistent with the Commissions' role in assuring that the public is receiving adequate service. Approval of a second ETC could appropriately be conditionally approved by the Commission based on an expectation that the second ETC will provide adequate service quality to its customers in the state of Indiana.

State commissions have examined ETC applicants' plans to serve customers and improve their networks. For example, in Arizona, the Commission has evaluated an ETC's plans for customers to receive service by utilizing various technical means.<sup>9</sup> The Arizona Commission observed that the ETC had been operating for approximately ten years and had worked with five Native American tribes to secure adequate cell sites on Native American lands.<sup>10</sup> Minnesota examined an ETC's plans to provide universal service to customers using .6-watt handheld phones or a 3-watt telephone and noted the applicant's commitment to building 15 specific cell sites in high-cost areas that it would not otherwise include in its network expansion plans because of cost issues.<sup>11</sup>

<sup>6</sup> *In the Matter of the Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 15 FCC Rcd 17442, 17454 n.59 (August 24, 2000).

<sup>7</sup> While the FCC has designated a wireless carrier even when dead spots were admitted, that certification was premised on remedying the specific dead spots identified by improving the network after certification. *In the Matter of Federal State Joint Board on Universal Service*, 17 FCC Rcd at 23538.

<sup>8</sup> 47 C.F.R. §22.911(6)(b).

<sup>9</sup> *See, Arizona Smith Bagley ETC Order* at 6.

<sup>10</sup> *Id.*

<sup>11</sup> *See Petition of Midwest Wireless Communications, L.L.C., for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. § 214(e)(2)*, OAH Docket No. 3-2500-14980-2, PUC Docket No. PT-6153/AM-02-

The Minnesota Public Utilities Commission found that the company was able to offer its services through approximately 200 cell sites in and around the state, pledged to build an additional 15 cell sites upon designation as an ETC, pledged to meet customer orders for new service through a variety of measures including additional cell sites, cell extenders, rooftop antennae, high-powered phones, and the resale of existing service, and was willing to address a customer's request for service by developing a schedule for extending service.<sup>12</sup> The Regulatory Commission of Alaska recently granted ETC status to a CMRS provider and stated that the provider need not prove its ability to construct facilities throughout every portion of the incumbent LEC's service area but must demonstrate that its system of providing service throughout the incumbent LEC's service area are *reasonable*.<sup>13</sup> The Alaska Commission found that a seven-step plan proposed by Alaska Digitel regarding customer service was reasonable.<sup>14</sup> All of these examples support the finding that ETCs can be held to service quality standards and oversight.

Numerous cases have held that requiring an ETC applicant to provide the required services prior to the grant of ETC status would work an anti-competitive outcome, as applicants would be forced to make outlays for services, unsure if such services would ever be requested or supported. However, in those cases where an applicant identifies such weaknesses in its system(s) that might prevent full implementation of a required service under 47 C.F.R. §54.101, we find that there is a requirement that the ETC applicant provide an affirmative statement of how and when the shortcoming is to be remedied. As an example, in the context of a request to extend the deadline for meeting E911 capability, the FCC recently advised Tier III wireless carriers as follows:

[T]he Commission should be able to make the factual determinations necessary to find good cause for granting the waiver if the carrier, as we have previously stated, provides 'concrete, specific plans to address the accuracy standards and ha[s] presented [its] testing data and other evidence to demonstrate its inability to meet the accuracy requirements'....Carriers should avoid blanket statements of technical infeasibility, instead providing technical data on particular portions of their network or pieces of equipment that are problematic.

*In the matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, FCC03-241, ¶26 (Released October 10, 2003).

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686, Findings of Fact, Conclusions of Law, and Recommendation at 6, 11 (Minn. Office of Admin. Hearings Dec. 31, 2002) (*Minnesota ALJ ETC Recommendation*).

<sup>12</sup> See *Minnesota Midwest Wireless ETC Order* at 6.

<sup>13</sup> See *Alaska Digitel ETC Order* at 8-9.

<sup>14</sup> *Id.* The plan states that if customer is not in an area where the CMRS provider, Alaska Digitel, currently provides service, Alaska Digitel will: (1) Determine whether the customer's equipment can be modified or replaced to provide acceptable service; (2) Determine whether a roof-mounted antenna or other network equipment can be deployed at the premises to provide service; (3) Determine whether adjustments at the nearest cell site can be made to provide service; (4) Determine whether a cell extender or repeater can be employed to provide service; (5) Determine whether there are any other adjustments to network or customer facilities that can be made to provide service; (6) Explore the possibility of resale; (7) Determine whether an additional cell site can be constructed to provide services, and evaluate the costs and benefits of using high cost support to serve the number of customers.

In this cause, an identification of areas where signal strength was below that needed for a reliable signal enabled NPCR to specify where upgrades to service – in the form of new cell towers or even an installation of new coaxial cable – could be made with USF money. Further, NPCR has made assurances to the Commission that USF money received will be used to benefit Indiana services by expansion of its existing coverage. If an ETC applicant wishes to support the existence of universal service, it must have made plans, expressed to the Commission in explicit terms, to remedy those areas of its service that might be otherwise lacking.

We find that this is a good admonition to carriers, no matter what the technology used. Applicants must make a thorough review of their service offerings and determine what, if any, parts of the system must be upgraded to be consistent with the then-current FCC guideline for ETCs. In addition, a failing in a system, even if outside the ETC core services required, should be addressed by the applicant in specific terms as a focus for upgrade with potential USF funds.

**c. State's obligation to oversee the financial aspects of USF**

The FCC specifically mandated that state commissions certify that the federal USF funds are being used “only for the provision, maintenance and upgrading of facilities and services for which the support is intended,” consistent with 47 U.S.C. §254(e). “Absent such a certification, carriers will not receive such support.” *Id.* In the *Matter of Federal-State Joint Board on Universal Service*, 16 FCC Rcd 11224, ¶187 (2001); 47 C.F.R. §54.314.

In the context of setting a benchmark of statewide average costs, the FCC has noted that the use of a statewide average costs “reflects what we believe to be an appropriate policy decision that in such cases the state has the primary responsibility and demonstrated ability to ensure rate comparability.” *In the Matter of Federal-State Joint Board on Universal Service*, 17 FCC Rcd 20716, 20728 (2002).<sup>15</sup> Support is intended to ensure reasonable comparability of intrastate rates, and states have primary jurisdiction in that area. *Id.* at 20734; *In the Matter of Federal-State Joint Board on Universal Service*, 12 FCC Rcd at 8842.

Hence, for a state to ensure rate comparability, it must review the rates of all ETCs it has certified. Absent such a comparison, the states have failed to meet their obligation to ensure that ETCs are using the funds to “achieve the goals of [TA '96.]” *In the Matter of Federal-State Joint Board on Universal Service*, 17 FCC Rcd at 20739. Therefore, NPCR (and any other ETC that comes before the Commission) must expect to have its tariffs examined.

This does not constitute the regulation of “the entry of or rates charged” by a wireless carrier. 47 U.S.C. §332(c)(3)<sup>16</sup>. Numerous courts have noted that even the imposition of a mandatory contribution to a state USF does not amount to rate regulation when applied by a state Commission to a wireless carrier. *TOPUC*, 183 F.3d at 431-432, citing *Sprint Spectrum L.P. v. State Corp. Commission*, 149 F.3d 1058, 1061 (10<sup>th</sup> Cir. 1998). Instead, this has been widely described as falling under the category of “other terms and conditions” that a state Commission may regulate regarding wireless carriers. 47 U.S.C. §332(c)(3).

<sup>15</sup> While the FCC made this decision in the context of non-rural rates, the analysis holds.

<sup>16</sup> States may, in fact, regulate the rates and entry of wireless carriers where they have replaced most of the wireline carriers in a market. However, that is not the case at bar.

In response to the question of whether the Commission may impose additional requirements on an ETC in the protection of the public interest, NPCR asserted that it is "concerned about non-applicable rules...[that] would get in the way of providing the service to our customers and the whole objective of expanding the network and providing excellent service to customers." Tr. at p. 107. However, NPCR properly recognizes the obligation of financial oversight, as reflected in the testimony of Mr. Wood, stating that the Commission must look "very carefully" at how ETCs of all stripes have spent the allocated funds. Tr. at 140-41. He goes on to say:

My experience has been that these support dollars don't represent total expenditures, that when they're available, they make a business case for rural entry that wasn't there before and that private capital follows them. So a hundred thousand in support might yield 3 million in new investment in those areas that now has a business case, that gets it over the hump.

*Id.*

While NPCR is correct in its assertion that the Commission does not regulate NPCR's rates, the Commission *does* have an affirmative duty to oversee the rates of ETCs, especially regarding Lifeline/Linkup tariffs. Without such oversight, the Commission cannot be assured that a carrier is not using its ETC status to competitive – and public – disadvantage. "An ETC is obliged, at the risk of financial sanctions, to serve designated customers at appropriate prices." 47 U.S.C. §214(d). State utility commissions are required to "determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof...." 47 U.S.C. §214(e)(3); *GCC License Corp.*, 623 N.W. 2d at 477.

Given this determination, we find that all ETCs are subject to the filing of Lifeline/Linkup tariffs, regardless of technology. This satisfies the requirement of competitive neutrality, as requiring wireline carriers to file such tariffs while exempting wireless carriers would work an inability to properly measure the marketplace of universal service.<sup>17</sup> The Commission cannot reasonably fulfill its statutory mandate to ensure that universal service is available at rates that are "just, reasonable, and affordable" without such filings. 47 U.S.C. §254(i). Further, this is not a requirement that is so "restrictive,"<sup>18</sup> to use NPCR's term, that it prohibits would-be entrants from entering the market. It is, in fact, regulation with a light hand.

Consistent with this duty, we also find that ETC applicants should affirmatively present what accounting protocols will be used to track and account for USF expenditures. The designation of an ETC creates both benefits and burdens on a telecommunications provider. While it gives the right to apply for USF funds, it also creates the concomitant requirement that such support be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. §254(e). In addition, the subsidy of competitive services by non-competitive services is prohibited in the provision of universal service. 47 U.S.C. §254(j). The Commission is charged with the obligation of establishing such

<sup>17</sup> *In the Matter of Federal-State Joint Board on Universal Service*, 17 FCC Rcd 22642 n.4 (2002)

<sup>18</sup> Tr. at 139-40.

"necessary cost allocation rules, accounting safeguards, and guidelines" to ensure that USF-funded services bear no more than a reasonable cost of the joint and common cost. *Id.* Without such oversight, the Commission cannot assure that NPCR, or any other ETC, is using USF funds in a manner consistent with the statutory mandate. We find that the requirement of tariff-filing and presentation of accounting protocols meet this definition and should be required of all ETCs under our jurisdiction.

Consistent with these requirements, we find that NPCR shall file reports with the Commission detailing its progress in the expansion and upgrading of service. Specifically, NPCR shall file its first report six (6) months from the date of this order, and annually thereafter, setting out the following:

- Its specific plan using USF funds for the "provision, maintenance and upgrading of facilities and services;
- Areas where signal strength is to be improved, with corresponding footprint redefinition;
- Timetable for implementation of new switches, towers, and all improvements to service that are set to be started on a date certain;
- Current status of previously reported projects and timelines;
- Number of complaints filed by Indiana customers with the FCC, IURC, or other regulatory entities;
- Number of requests for service in its designated Indiana service area that were unable to be completed due to lack of facilities or signal.

To the extent that such reports contain confidential matter that constitute trade secrets as defined under Indiana law, NPCR (and any future ETC subject to our jurisdiction) may request confidential treatment pursuant the Commissions' then-current policies.

#### **d. Competition**

Universal service and competition must be balanced; one must not be sacrificed to supplant or benefit the other. *Washington Independent Telephone Assn. v. Washington Utilities and Trans. Comm.*, 149 Wn.2d 17, 27, 65 P.3d 319, 324 (2003), citing *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 615 (5<sup>th</sup> Cir. 2000); see also *Washington Independent Telephone Assoc. v. Washington Utilities and Transportation Comm.*, 110 Wn. 498, 516, 41 P.3d 1212 (2002), citing *In the Matter of Federal-State Board on Universal Service*, 12 FCC Rcd at 8801-03; *In the Matter of Federal-State Joint Board on Universal Service*, 13 FCC Rcd at 5365. The purpose of the public interest requirement is not to protect rural telecommunications companies from competition, "but to ensure that rural areas receive the same benefits as urban areas." *In re the Application No. C-1889 of GCC License Corp. (Western Wireless)*, 264 Neb. 167, 172, 647 N.W.2d 45, 50 (2002). State commissions are granted the authority to determine whether

such certification is in the public interest. *In the Matter of Federal-State Joint Board on Universal Service*, 15 FCC Rcd 15168, 15184 n.6 (2000).

In fact, competition is but one element of the bundle that is universal service. TA '96 identified that competition is the only way to open the market and broaden the available choices to consumers. However, it is a means to an end – not the end itself. An examination of competition as it relates to CETCs must focus on whether the competitive force created by the certification of a particular carrier will benefit consumers by furthering the purpose of universal service.

The OUCC and Intervenors introduced evidence that competition for wireless service is not lacking in rural Indiana, with most areas already having access to competitive services from a number of different wireless service providers. Therefore, there was conflicting evidence on the issue of whether designating NPCR as an additional ETC in its proposed ETC service areas would actually increase the level of competition in Indiana. NPCR testified that the intervenors in this case had tried to make this cause “about competition,” shifting the focus from the proper inspection of NPCR’s specific petition for ETC status. Tr. at 113. As Mr. Wood stated, “it should be specific to the company’s application and to the areas in question. It’s not really a question of should we have competition.” Tr. at 137.

NPCR properly recognizes that the public interest inquiry does not focus on what is best for an individual carrier, but what the impact on consumers will be. Tr. at 132. Indiana has telephone service available in all areas, and by NPCR’s own admission there are at least three or more competitive wireless carriers in all rural areas of Indiana.<sup>19</sup> Tr. at 79. Hence, if we certify NPCR, we are not introducing service to previously unserved areas. If that were the test, no ETCs could be designated hence in Indiana. However, “the purpose of the public interest requirement of 47 U.S.C. §214(e) [is] not to protect rural telecommunications companies from competition but to ensure that rural areas receive the same benefits as urban areas.” *In re Application No. C-1889 of GCC License Corp. (Western Wireless)*, 647 N.W.2d at 50.

The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well. Moreover, excessive funding may itself violate the sufficiency requirements of the Act. Because universal service is funded by a general pool subsidized by all telecommunications providers – and thus indirectly by the customers – excess subsidization in some cases may detract from universal service by causing rates

<sup>19</sup> Seventy-five percent of the population has access to five or more wireless carriers, as stated by the FCC. *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 16 FCC Rcd 13350, 13355 (2001). The FCC goes on to note that due to the cap on frequency spectrums, “there are at least four different licensees in every market, and as a practical matter, there are generally five or more licensees in every market.” *Id.* at 13361.

unnecessarily to rise, thereby pricing some consumers out of the market... 'Sufficient' funding of the customer's right to adequate telephone service can be achieved regardless of which carrier ultimately receives the subsidy.

*Alenco*, 201 F.3d at 620-21 (emphasis in original).

As such, we must make a determination of whether NPCR's petition meets these various hurdles. This goes hand-in-hand with the requirement that an applicant show what it would do with the funds, if received. The oversight of public impact, in the form of potentially higher fees to consumers, or lower amounts to competitors, is within the purview of this Commission, and without this evidence our analysis cannot be complete.

If granted, NPCR has committed to becoming a carrier providing ubiquitous service in the designated areas – thereby extending the benefits known in urban areas to their rural counterparts. This is the promise that was made when the market was opened to competition – that additional carriers would enter the market with service alternatives. Further, NPCR provided an estimate that ETC designation would bring approximately \$13,000.00 per month, or \$156,000.00 per year. Tr. at 81. When that amount is placed in the context of NPCR's testimony that every dollar of USF money is more than matched by a carrier, this represents a significant investment in Indiana's telecommunications network, especially in rural areas. Such network extension has the potential for improvements by other carriers, as they compete for the public's business – the benefit of competition at its best.

Similarly, NPCR presented evidence that the certification of an Indiana CETC would have very low impact on Indiana consumers – that the change to the USF factor would have “to go out to seven or eight decimal places to find an impact from the designation of CETCs.” Tr. at 120. While NPCR maintains that an examination of fund impact is inappropriate for the Commission in this proceeding<sup>20</sup> (a statement with which we disagree), NPCR nonetheless came prepared to discuss the impact its designation might have on the USF fund. No less is to be expected from any ETC applicant. The potential impact on the USF is a topic properly before this Commission in its determination of whether an applicant's designation is in the public interest, and is part of the balancing the Commission must do when viewing the application through the lens of competition. We find that NPCR's commitment to expand its network, cure “dead spots” and become a reliable carrier of last resort is in the public interest, as well as its promise to provide the Commission with appropriate documentation on the utilization of funds. Their testimony shows a concerted effort to identify and remove impediments to service that is truly universal within the proposed areas.

#### e. Other Factors

There are other factors that make granting NPCR's petition in the public interest. At this juncture, NPCR is currently the carrier of choice for “over 10 Indiana colleges, public school and libraries, and local, state and federal government agencies, specifically law enforcement.” NPCR Petition, ¶8.D. Given the explicit direction that school and libraries receive support in the

<sup>20</sup> Tr. at 119.

context of universal service, supporting a carrier of choice in its attempt to expand and improve its network logically follows. Further, nothing can be closer to the heart of the public interest than improving service for those who serve in law enforcement. We need not belabor the point that of all subscribers, law enforcement needs consistent coverage and service. Hence, supporting the network of NPCR in increasing its signal, expanding its coverage, and improving its network is clearly in the public interest, in that it serves state, local, and federal government – the servants of the people.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. NPCR's application for designation as an Eligible Telecommunications Carrier ("ETC"), as that term is defined in 47 U.S.C. 214(e) and FCC Order 97-157, is hereby GRANTED.


2. NPCR's request for authority to apply for or receive federal universal service funds pursuant to 47 U.S.C. 254 is hereby GRANTED.

3. This Order shall be effective on and after the date of its approval.

**McCARTY, HADLEY, LANDIS, RIPLEY AND ZIEGNER CONCUR:**  
**APPROVED:**

MAR 17 2004

I hereby certify that the above is a true  
and correct copy of the Order as approved.

  
Mary M. Becerra  
Acting Secretary to the Commission

**PEABODY EXHIBIT NO. 7**

ARKANSAS PUBLIC SERVICE COMMISSION

FILED

IN THE MATTER OF THE APPLICATION OF )  
 NPCR, INC. D/B/A NEXTEL PARTNERS FOR )  
 DESIGNATION AS AN ELIGIBLE )  
 TELECOMMUNICATIONS CARRIER )  
 PURSUANT TO SECTION 214(e)(2) OF THE )  
 COMMUNICATIONS ACT OF 1934, AS AMENDED )

DOCKET NO. 03-141-U  
 ORDER NO. 4

**ORDER**

On August 28, 2003, NPCR, Inc. d/b/a Nextel Partners ("Nextel") initiated this docket by filing a petition for designation as an eligible telecommunications carrier ("ETC") pursuant to section 214(e)(2) of the Federal Communications Act of 1934 as amended<sup>1</sup>, ("the Federal Act"). Nextel's petition asserts that the Arkansas Public Service Commission ("APSC" or "this Commission") has established procedures for designation as an ETC<sup>2</sup> and that Nextel has complied with those procedures.

Nextel states that it is a commercial mobile radio service common carrier<sup>3</sup> and seeks designation as an ETC for certain specified wire centers in a Southwestern Bell Telephone Company study area.<sup>4</sup> Nextel asserts that, pursuant to § 214(e)(2) of the Federal Act and consistent with this Commission's Order in Docket No. 97-326-U, the Commission must designate more than one common carrier as an ETC in non-rural service areas as long as each carrier requesting ETC status meets the requirements of § 214(e)(2) of the Federal Act.

In support of its petition, Nextel offers the affidavit of Donald J. Manning, Vice President and General Counsel for Nextel. Mr. Manning's affidavit asserts that Nextel is able to offer all

<sup>1</sup> 47 U.S.C § 214 (e)(2).

<sup>2</sup> See *in the Matter of Determining Eligible Telecommunications Carriers in Arkansas*, Order No. 1, Docket 97-326-U (August 15, 1997).

<sup>3</sup> Also referred to as a wireless or cellular carrier.

<sup>4</sup> See attachment 1, exhibit A to Nextel's petition.

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PEABODY  
 EXHIBIT 7

services and functionality required by 47 CFR § 54.101(a) to its customers using its own facilities in the Southwestern Bell wire center areas. Specifically, Nextel states that it is able to offer voice grade access to the public switched network, local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent, access to emergency service, access to operator services, access to interexchange service, access to directory assistance, and toll limitation for qualifying low-income consumers. The affidavit states that Lifeline and Linkup programs, which can only be offered by ETCs, and toll blocking for Lifeline subscribers, will be made available when Nextel receives an ETC designation.

Three sets of comments were filed on September 29, 2003 by three groups of incumbent local exchange carriers ("ILECs")<sup>5</sup>. The rural ILECs argue that wireless carriers are essentially unregulated in Arkansas and do not provide their customers with the protections provided in the APSC's Telecommunications Provider Rules because wireless carriers are not subject to those rules. The rural ILECs argue that, because wireless carriers are not subject to the APSC's Telecommunications Provider Rules, it may not be in the public interest to approve Nextel's ETC request.

The rural ILECs also argue that if Nextel takes a customer from an ILEC, the rural ILECs would lose terminating access charges which would have been paid to rural ILECs for terminating the toll calls of the customer taken by Nextel. The rural ILECs acknowledge that Nextel would pay terminating access charges to rural ILECs for termination of toll calls from

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<sup>5</sup> The commenting parties are three groups of ILECS which will be referred to as (1) "the rural ILECS", which consist of Arkansas Telephone Company, Inc.; Central Arkansas Telephone Cooperative, Inc.; Madison County Telephone Company; Magazine Telephone Company; Northern Arkansas Telephone Co.; Pinnacle Communications; Prairie Grove Telephone Company; Rice Belt Telephone Company; South Arkansas Telephone Company, Inc.; Southwest Arkansas Telephone Cooperative, Inc.; Walnut Hill Telephone Company; and Yell County Telephone Company (2) "the Ritter companies", which consist of Ritter Communications Holdings, Inc. on behalf of its wholly owned subsidiaries Ritter Telephone Company and Tri-County Telephone Company, along with Yelcot Telephone Company and Mountain View Telephone Company and (3) "the CenturyTel companies" which consist of CenturyTel of Central Arkansas, LLC; CenturyTel of Northwest Arkansas, LLC; CenturyTel of Arkansas, Inc.; CenturyTel of Mountain Home, Inc.; CenturyTel of Redfield, Inc.; CenturyTel of South Arkansas, Inc.; Cleveland County Telephone Company, Inc.; and Decatur Telephone Company, Inc.

Nextel customers, however, the rural ILECs assert that the terminating access rates paid by wireless carriers are substantially less than those paid by other ILECs, such as Southwestern Bell, and the resulting reduction in access charges paid to the rural ILECs could affect their profitability and lead to rate increases for the customers of the rural ILECS.

The Ritter companies argue that ACA § 23-17-405(b) (5) provides that Nextel may not be designated as an ETC unless “it is determined by the Commission that the designation is in the public interest” and that Nextel is not entitled to an automatic grant of ETC status. The Ritter companies state that Nextel has failed to demonstrate that ETC designation for Nextel is in the public interest and that Nextel has not shown that competition will be materially increased or that new or advanced services will be delivered sooner as a result of Nextel receiving ETC designation. The Ritter companies assert that granting ETC status to Nextel could detrimentally effect the Federal Universal Service Fund, (“USF”), because the USF is funded by assessments on telecommunications providers’ interstate revenue and as the size of the USF grows, as a result of commercial mobile radio service providers receiving ETC status, the customers of the Ritter companies will be charged increasing amounts to fund the USF and will receive no demonstrable benefit.

The Ritter companies also argue that CMRS providers are not subject to the same quality of service standards as ILECs and are not required to act as a provider of last resort. The Ritter companies assert that the lack of these protections for Nextel’s customers leads to the conclusion that Nextel’s designation as an ETC is not in the public interest.

The Ritter companies’ comments also point out the continuing activity by the Federal-State Joint Board on Universal Service (“Joint Board”) and the United States House of Representatives Energy and Commerce Committee which are reviewing the operations of the USF. The Ritter companies suggest that this Commission wait until the Joint Board and

Congress have completed their reviews of the USF and made any necessary changes before granting ETC status to Nextel.

The CenturyTel companies also raise many of the issues that are currently under review by the Joint Board, arguing that the availability of affordable high quality telephone services to consumers is at risk because of the ever-increasing demands on the USF from new carriers being granted ETC status. The CenturyTel companies request that the APSC deny the ETC request and initiate a generic proceeding to examine the policy and factual issues presented by the application or delay any decision until the Joint Board reports its findings regarding the USF to the Federal Communications Commission ("FCC"). The CenturyTel companies refer to the "spiraling" demands on the USF caused by the influx of ETC applications asserting that Nextel does not need USF support to be competitive and that granting ETC status to carriers that do not need USF support places the USF at risk. The CenturyTel companies note that the Federal Universal Service charge has increased from 6.8 % to 9.3 % on interstate revenue over the past two years and note that this issue is currently under review by the Joint Board.

The CenturyTel companies also argue that, when a carrier like Nextel receives an ETC designation, it can increase its revenues through USF support funds regardless of whether it adds any additional customers or obtains any customers from the ILEC serving the same area. CenturyTel suggests that this ability to artificially inflate revenues through Federal USF support when it cannot be shown that the revenues are needed is contrary to the public interest.

The CenturyTel companies claim that Nextel has not shown that it is able to provide service in the entire study area, i.e., the geographical area for which Nextel seeks ETC status, and argue that the FCC rules which require wireless ETCs to use the customer billing address for the purpose of identifying the service location provides an opportunity for customers to misuse the service by obtaining service using a billing address within the ETC designated area, but using

the service primarily within the service area of a rural ILEC. The CenturyTel companies argue that the Commission should hold all pending ETC applications in abeyance until the FCC has an opportunity to consider the Joint Board recommendations on the issues raised by the CenturyTel companies in their comments.

The CenturyTel companies' comments also reiterate the arguments previously made asserting that when a wireless ETC captures a customer from an existing ILEC, the amount of access revenues received by ILECs terminating calls for the wireless ETC is less than the amount of terminating access which the ILEC would have received if it had terminated the call from another ILEC customer, thereby reducing the amount of access revenues available to the ILECs. The CenturyTel companies also argue that Nextel is not required to serve as a carrier of last resort and is not subject to the APSC's Telecommunications Provider Rules. The CenturyTel companies assert that because the Telecommunications Provider Rules are not applicable to Nextel, Nextel customers would not be able to file formal complaints and that the Commission could not require credits or refunds for service interruptions, billing errors or failure to provide service. The CenturyTel companies state that Nextel's rates are not subject to investigation by this Commission and that Nextel's customers deserve the protections of the Commission's Telecommunications Provider Rules. The CenturyTel companies assert that because Nextel is currently providing service in the area in which it seeks ETC designation, this Commission should conclude that adequate competition exists in the area and that it is not in the public interest to designate Nextel as an ETC since such designation would not further promote competition.

Nextel's response to the comments filed by the ILECs asserts that it has met all of the criteria set forth in the Federal Act and this Commission's previous orders regarding ETC designation. Nextel emphasizes that it is not seeking ETC designation in any area served by a

rural telecommunications company. Nextel argues that the Federal Act requires this Commission to provide Nextel with an ETC designation if it meets the qualifications set forth in 47 USC § 214(e)(1) and 47 CFR § 54.201(d). Nextel asserts that it has met those requirements and this Commission must, therefore, provide an ETC designation to Nextel. Nextel argues that FCC precedent holds that designation of an ETC in non-rural territory per se satisfies the public interest requirement, citing *In the Matter of Federal-State Joint Board on Universal Service; Farmer's Cellular Telephone, Inc. Petition for a Designation as an Eligible Telecommunication Carrier*, 18 FCC Rcd 3848 (released March 12, 2003).

Although the comments raise significant public policy issues, those issues are properly being addressed at the Congressional level and at the Federal Communications Commission. To the extent comments raise public policy issues such as the potential expansion of the Federal Universal Service Fund, these matters of public policy should be addressed at the Federal level and should not effect this Commission's decision in this case for two reasons. First, this Commission has no jurisdiction to make changes in the Federal USF or the laws under which the Federal USF is established, and, second, this Commission is obliged to follow the requirements of Arkansas law which require this Commission to act consistently with the Federal Act.

ACA § 23-17-405 provides that the Commission may designate other telecommunications providers to be eligible for high-cost support consistent with 47 USC § 214(e) (2). This grant of authority to the Commission is conditioned on the telecommunications provider accepting responsibility to provide service to all customers in the ILEC's local exchange area through its own facilities or a combination of facilities, and the support will not begin until the telecommunications provider has the facilities in place to serve the area. The telecommunications provider may only receive funding for the portion of its facilities that it owns and maintains, the telecommunications provider must advertise the availability and

charges for its services, and the Commission must determine that the designation is in the public interest.

47 USC § 214(e)(2) states that:

A State Commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State Commission. Upon request and consistent with the public interest, convenience, and necessity, the State Commission may in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State Commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State Commission shall find that the designation is in the public interest.

(Emphasis added).

Nextel seeks ETC designation in an area served by a non-rural telephone company. Section 214(e)(2) clearly directs the Commission to designate more than one common carrier as an ETC if the requirements of paragraph (1) are met. Sections 214 (e)(1)(A) and (B) require that the carrier seeking ETC status must “offer the services that are supported by Federal Universal Service support mechanisms under § 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier); and advertise the availability of such services and the charges therefore using media of general distribution.) The affidavit submitted by Nextel clearly indicates that Nextel has, or upon receiving ETC designation will, offer the services required and advertise the availability of those services in compliance with § 214(e)(1) and § 254(c) thereby meeting the requirements of § 214(e)(2) of the Federal Act.

ACA § 23-17-405 requires this Commission to act in a manner which is “consistent with § 214(e)(2) of the Federal Act . . .” The fact that Nextel has agreed to comply with § 214(e) in

obtaining ETC designation in an area served by a non-rural carrier is sufficient to determine that granting ETC status is consistent *per se* with the public interest. *In the Matter of Federal-State Joint Board on Universal Service; Farmer's Cellular Telephone, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, 18 FCC Rcd 3848 (released March 12, 2003); *Cellco Partnership d/b/a Bell Atlantic Mobile Petitioned for Designation as an Eligible Telecommunications Carrier*, 16 FCC Rcd 39, ¶ 14 (2000); *Pine Belt Cellular and Pine Belt PCS, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, 17 Rcd 9589, ¶ 13 (2002).

In adopting the Telecommunications Regulatory Reform Act of 1997(ACA § 23-17-401 *et seq.*), the General Assembly stated that its intent was to provide for a system of regulation, consistent with the Federal Act, that assists in implementing the national policy of opening the telecommunications market to competition on fair and equal terms. Many of the objections made to the granting of ETC status by the commenting parties suggest that the granting of ETC status could affect the profitability of those companies and possibly result in rate increases to their customers. They therefore argue that it is not in the public interest and is inconsistent with Arkansas law to approve the ETC request. This argument ignores the statutory intent to implement competition, which will obviously have an affect on the profitability of some companies, but will also provide competitive alternatives to customers. If the ILECs receive reduced terminating access charges from the contracts they have negotiated with wireless carriers, they should receive the benefit of paying reduced access charges for terminating their calls to the wireless networks. Additionally, the terminating access rates paid between ILECs and wireless carriers are negotiated rates which the ILECs have agreed to pay. The contracts between the ILECs and wireless carriers should not, therefore, provide a basis to deny ETC status to a wireless carrier.

The suggestion by the ILECs that granting ETC status could affect their profits and their customers' rates does not suggest that granting ETC status is not in the public interest. The granting of ETC status to Nextel will provide a competitive alternative for customers in the Southwestern Bell area in which Nextel seeks to provide service. The effect on the ILECs in Arkansas, resulting from the funding of the USF through assessments on all carriers' interstate services, is essentially the same regardless of whether an ETC request is granted in Arkansas or by another state commission. There will be some effect on amounts paid by Arkansas ILECs, since all carriers' interstate revenues are assessed to support the USF; however, denying the request would prohibit a group of Arkansas consumers from having the competitive alternatives available to customers in other states even though those Arkansas consumers would be indirectly paying for the benefits to customers in other states through payments for interstate services which originate or terminate in Arkansas.

To the extent that the commenting parties have suggested that the Commission delay its decision pending resolution of some of the issues raised in the comments and currently pending or under consideration in United States Congressional committees or before the FCC's Joint Board, the request to delay would be inconsistent with the requirements of 47 USC § 214 (e)(2) which states that the Commission "shall" grant the ETC request if the requirements of the statute are met. Additionally, the issues raised by the commenting parties are best dealt with in the appropriate forums which have the jurisdiction to effect any changes which might be deemed necessary.

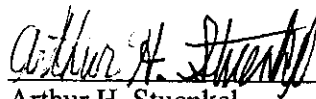
The commenting parties also argue that the ETC designation, if granted, should be conditioned on Nextel's agreement to submit to this Commission's jurisdiction for enforcement of the Commission's Telecommunications Provider Rules. This recommendation appears to be inconsistent with the requirements of ACA § 23-17-411(g), which substantially limits the

Commission's jurisdiction over commercial mobile radio services. The recommendation also lacks support under § 214(e) which requires the Commission to grant ETC status if the conditions set forth in the statute are met.

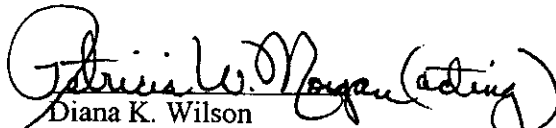
In view of the foregoing, the request by NPCR, Inc.d/b/a Nextel Partners for ETC status in the exchanges of Southwestern Bell Telephone Company-Arkansas (study area code 405211) is hereby granted.

BY ORDER OF THE PRESIDING OFFICER PURSUANT TO DELEGATION.

This 22nd day of December, 2003.

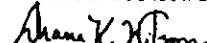


Arthur H. Stuenkel  
Presiding Officer



Diana K. Wilson  
Secretary of the Commission

I hereby certify that the following order issued by the Arkansas Public Service Commission has been served on all parties of record this date by the U.S. mail with postage prepaid, using the address of each party as indicated in the official docket file.



Diana K. Wilson

Secretary of the Commission  
Date

12-22-2003

**PEABODY EXHIBIT NO. 8**

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  NPCR, INC. d/b/a NEXTEL PARTNERS	DOCKET NO. 199 IAC 39.2(4)
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**ORDER DESIGNATING ELIGIBLE CARRIER**

(Issued May 15, 2003)

On December 30, 2002, NPCR, Inc. d/b/a Nextel Partners (Nextel) filed with the Utilities Board (Board) an application for universal service eligible carrier status in Iowa. The application was supplemented on February 7, March 19, and April 8, 2003. Nextel asks that the Board designate Nextel as an eligible telecommunications carrier (ETC) pursuant to 199 IAC 39.2(4). No objections have been filed regarding this application.

Rule 39.2 provides a means by which the Board can designate Iowa telecommunications companies to be eligible to receive funding from the universal service fund, as defined by the Telecommunications Act of 1996, 47 U.S.C. § 254. Under the Act (and Federal Communications Commission (FCC) regulations implementing the Act), the Board must determine that a carrier meets the following service requirements before it may be designated an eligible carrier as set forth in subrule 39.2(4):

- 1) Offer the services supported by the federal universal service fund;
- 2) Offer the service using its own facilities or a combination of its own facilities and resale (47 C.F.R. § 54.201(c) provides that "own facilities" includes purchased unbundled network elements);
- 3) Advertise the availability of the supported services; and,
- 4) Offer the services throughout the designated service area.

An ETC must also offer a minimum amount of local exchange service, defined in usage minutes, provided with no additional charge to customers. See FCC 98-272, October 26, 1998. See also 199 IAC 39.2(1)"b." The FCC has not yet quantified a minimum amount of local usage required to be included in a universal service offering, but has initiated a rule making proceeding to address this issue. Id. Any minimum local usage requirements established by the FCC as a result of that rule making would be applicable to all designated ETCs. The Board understands that Nextel will comply with any and all minimum local usage requirements adopted by the FCC. The Board also understands that until the FCC establishes a minimum requirement, Nextel will offer at least one universal service offering with unlimited local calling.

In its request for designation, Nextel states that it satisfies each of these named requirements. Based upon those unopposed representations and the company's commitment to follow the minimum local usage requirements when

adopted by the FCC, the Board finds that Nextel offers the services supported by the federal universal service fund, using its own facilities or a combination of its own facilities and resale of the facilities of another carrier. The Board finds that Nextel advertises and offers the services throughout its service area as described in Attachment "A," which will be its designated service area for purposes of the universal service fund. Nextel has also stated that it will provide to the Board for informational purposes, a description of the service and rate plan(s) when it commences provision of universal service fund offerings to Iowa customers. The Board finds these commitments by Nextel adequate to assure that public interest concerns will be satisfied.

The Board also notes that pursuant to a recent federal mandate, Nextel is required to file a certification with the Board regarding its use of universal service funds. This filing will be made pursuant to the Board's subrule 199 IAC 22.2(7), as described in Docket No. RMU-01-14, Certification of Rural and Non-Rural Telecommunications Carriers.

**IT IS THEREFORE ORDERED:**

1. Eligible telecommunications carrier status is granted to NPCR, Inc., d/b/a Nextel Partners, as requested in its application filed December 30, 2002, and supplemented on February 7, March 19, and April 8, 2003, subject to the voluntary commitments described in the body of this order. The designated service area for NPCR, Inc. d/b/a Nextel Partners shall be the service territories documented in

Attachment "A" of the application attached to and incorporated by reference in this order.

2. NPCR, Inc. d/b/a Nextel Partners shall file with the Board a description of its service and rate plan offerings when it begins providing universal service fund offerings to Iowa customers.

3. The Executive Secretary of the Utilities Board shall mail copies of this order to NPCR, Inc. d/b/a Nextel Partners, the Universal Service Administration Company, the Federal Communications Commission Universal Service Branch, and the Federal Communications Commission Office of the Secretary.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 15<sup>th</sup> day of May, 2003.

**Exhibit A****List of Study Areas that Nextel Partners Serves in their Entirety**

<b>SAC</b>	<b>Study Area Name</b>
351096	HEARTLAND COMMUNICATIONS OF IA DB
351097	ANDREW TEL CO INC.
351101	ATKINS TEL CO, INC.
351107	BALDWIN-NASHVILLE TEL CO
351108	BARNES CITY COOP TEL
351110	BERNARD TEL CO INC.
351112	BREDA TEL COOP
351113	BROOKLYN MUTUAL TEL
351115	BUTLER-BREMER MUTUAL
351118	CASCADE TEL CO
351119	CASEY MUTUAL TEL CO
351121	CENTER JUNCTION TEL
351125	CENTRAL SCOTT TEL CO
351126	CENTURYTEL OF CHESTER, INC.
351130	CLARENCE TEL CO
351132	CLEAR LAKE INDEPEND
351134	COLO TEL CO
351136	COON CREEK TEL CO
351137	COON VALLEY COOP TEL
351139	COOPERATIVE TEL CO
351146	CUMBERLAND TEL CO
351147	DANVILLE MUTUAL TEL
351149	DEFIANCE TEL CO
351150	DIXON TEL CO
351152	DUMONT TEL CO
351153	DUNKERTON TEL COOP
351156	EAST BUCHANAN COOP
351157	ELLSWORTH COOP ASSN.
351158	MINBURN TELECOM INC. FRONTIER-SCH
351160	FARMERS & BUSINESSMEN TEL CO
351166	FARMERS & MERCHANTS MUTUAL TEL
351168	FARMERS MUTUAL COOP - HARLAN
351169	FARMERS MUTUAL COOP - MOULTON
351170	IOWA TELECOMM SVCS DBA IOWA TELECOM
351171	FARMERS MUTUAL JESUP
351173	FARMERS MUTUAL COOP - SHELLSBURG
351174	FARMERS MUTUAL TEL - STANTON
351175	FARMERS TEL CO - BATAVIA
351177	FARMERS TEL CO -RICEVILLE
351187	MID-IOWA TEL CO
351188	GOLDFIELD TEL CO
351189	RIVER VALLEY COOP
351191	GRAND MOUND COOP TEL

351195 GRISWOLD CO-OP TEL  
351199 HAWKEYE TEL CO  
351202 HOSPERS TEL EXCH INC.  
351203 HUBBARD COOP ASSN.  
351205 HUXLEY COOP TEL CO  
351206 IAMO TEL CO - IA  
351209 INTERSTATE 35 TEL CO  
351212 JEFFERSON TEL CO -IA  
351213 JORDAN SOLDIER VALLEY COOP  
351214 KALONA COOP TEL CO  
351217 KEYSTONE FRMS COOP  
351220 LA PORTE CITY TEL CO  
351222 LA MOTTE TEL CO  
351223 LAUREL TEL CO, INC.  
351225 LEHIGH VALLEY COOP  
351229 LOST NATION-ELWOOD  
351232 LYNNVILLE TELEPHONE COMPANY  
351235 MANILLA TEL CO  
351237 MARNE & ELK HORN TEL  
351238 MARTELLE COOP ASSN.  
351239 MASSENA TEL CO  
351241 MECHANICSVILLE TEL  
351242 MILES COOP TEL ASSN.  
351243 MILLER TEL CO - IA  
351245 MINBURN TEL CO  
351246 MINERVA VALLEY TEL  
351247 MODERN COOP TEL CO  
351248 MONTEZUMA MUTUAL TEL  
351250 MUTUAL TEL CO OF MORNING SUN  
351251 MEDIAPOLIS TEL CO  
351252 MUTUAL TEL CO  
351257 NORTH ENGLISH COOP  
351259 NORTHERN IOWA TEL CO  
351260 NORTHWEST IOWA TEL  
351261 NORTHWEST TEL COOP ASSOC.  
351262 COMMUNICATIONS 1 NETWORK, INC.  
351263 OGDEN TEL CO - IA  
351264 OLIN TEL CO, INC.  
351265 ONSLOW COOP TEL ASSN.  
351266 ORAN MUTUAL TEL CO  
351269 PALO COOP TEL ASSN.  
351270 PALMER MUTUAL TEL CO  
351271 PANORA COOP TEL ASSN.  
351275 PRAIRIEBURG TEL CO  
351276 PRESTON TEL CO  
351277 RADCLIFFE TEL CO  
351278 READLYN TEL CO  
351282 ROCKWELL COOP ASSN.  
351292 SEARSBORO TEL CO  
351293 SHARON TEL CO

351294 SCRANTON TEL CO  
351295 SHELL ROCK TEL CO  
351297 HEART OF IOWA COOP  
351298 SOUTH SLOPE COOP TEL  
351301 SOUTHWEST TEL EXCH  
351302 SPRINGVILLE COOP TEL  
351303 COOPERATIVE TEL EXCHANGE  
351304 SWISHER TEL CO  
351305 STRATFORD MUTUAL TEL  
351306 SULLY TEL ASSOC  
351308 TEMPLETON TEL CO  
351310 TITONKA TEL CO  
351320 VAN HORNE COOP TEL  
351322 VENTURA TEL CO, INC.  
351326 WALNUT TEL CO, INC.  
351328 WEBSTER-CALHOUN COOP  
351329 WELLMAN COOP TEL  
351331 WEST IOWA TEL CO  
351332 WEST LIBERTY TEL CO  
351334 WESTERN IOWA ASSN.  
351336 WILTON TEL CO  
351337 WINNEBAGO COOP ASSN. - IA  
351342 WOOLSTOCK MUTUAL  
351343 WYOMING MUTUAL TEL  
351344 PRAIRIE TEL CO  
351405 HILLS TEL CO, INC.-IA  
351888 GRAND RIVER MUT-IA  
355141 QWEST CORP-IA

**PEABODY EXHIBIT NO. 9**

**PEABODY EXHIBIT NO. 9**

Date Mailed September 30, 2003
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BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of NPCR, Inc., d/b/a Nextel Partners for Designation  
as an Eligible Telecommunications Carrier in Wisconsin

8081-TI-101

**FINAL DECISION**

This is the final decision in this proceeding to determine whether to designate NPCR, Inc. (Nextel) as an Eligible Telecommunications Carrier (ETC), pursuant to 47 U.S.C. § 214(e)(2) and Wis. Admin. Code § PSC 160.13. Designation as an ETC makes a provider eligible to receive universal service fund (USF) monies.

**Introduction**

Nextel filed an application for ETC designation on April 24, 2003. The Commission issued a Notice of Investigation on June 27, 2003. The Commission issued a Notice Requesting Comments on September 12, 2003. A number of entities filed comments on September 18, 2003.<sup>1</sup> The Commission discussed this matter at its September 25, 2003 open meeting.

Nextel requested ETC designation for the exchanges shown in Appendix B. The territories for which ETC designation is requested are served by a mix of rural and non-rural telecommunications carriers.

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<sup>1</sup> Citizens Utility Board ("CUB"); CenturyTel, Inc. and TDS Telecom Corporation; the Wisconsin State Telecommunications Association Small Company Committee (WSTA Small Company Committee); Wisconsin State Telecommunications Association ILEC Division (WSTA ILEC Division); Wisconsin State Telecommunications Association Wireless Division; Nsighttel Wireless (for seven applicants); Nextel and ALLTEL.

**Findings of Fact**

1. The wireless industry, its customary practices, its usual customer base, and Nextel's desire not to obtain state USF money create an unusual situation.
2. It is reasonable to adopt different ETC eligibility requirements and obligations for Nextel than specified by Wis. Admin. Code § PSC 160.13.
3. It is reasonable to require Nextel to meet only the federal requirements for ETC status in order to be eligible for ETC designation.
4. It is reasonable to relieve Nextel from ETC obligations other than those imposed under federal law.
5. It is reasonable to require that Nextel not apply for state USF funds and that if it ever does, all state requirements for and obligations of ETC status shall again be applicable to it.
6. Nextel meets the federal requirements for ETC designation.
7. It is in the public interest to designate Nextel as an ETC in certain areas served by rural telephone companies.
8. It is reasonable to grant Nextel ETC status in the non-rural wire centers indicated in its application, to the extent that the wire centers are located within the state.
9. It is reasonable to grant Nextel ETC status in the areas for which it has requested such designation where the request includes the entire territory of a rural telephone company, to the extent such areas are located within the state.
10. It is reasonable to grant Nextel ETC status in the areas for which it has requested such designation where the request does not include the entire territory of a rural telephone company, to the extent the areas are located within the state, conditioned upon the Federal Communications Commission (FCC) approving the use of the smaller areas.

### **Conclusions of Law**

The Commission has jurisdiction and authority under Wis. Stats. §§ 196.02, 196.218 and 196.395; Wis. Admin. Code ch. PSC 160; 47 U.S.C. §§ 214 and 254; and other pertinent provisions of the Telecommunications Act of 1996, to make the above Findings of Fact and to issue this Order.

The law does not require the Commission conduct a hearing in this docket as requested by the CUB; CenturyTel, Inc., and TDS Telecom Corporation; and the WSTA Small Company Committee and WSTA ILEC Division.

If “notice and opportunity for hearing” as provided by Wis. Stat. § 196.50(2)(f) is applicable in this case, or if process is due to the current ETCs in the rural areas at issue on any other basis, the Notice Requesting Comments, dated September 12, 2003, satisfies this requirement.

### **Opinion**

On December 20, 2002, the Commission granted the U.S. Cellular ETC status as applied for in Docket No. 8225-TI-102. *Application of United States Cellular Corporation for Designation as an Eligible Telecommunications Carrier in Wisconsin*, Docket No. 8225-TI-102, 2002 WL 32081608, (Wisconsin Public Service Commission, December 20, 2002). The instant application is substantively similar to the application of U.S. Cellular. The Commission reaffirms its decision in Docket No. 8225-TI-102 and relies on the opinion issued in the Final Decision in that docket, to approve Nextel’s application.

ETC status was created by the FCC, and codified in 47 U.S.C. § 214(e)(2). Under FCC rules, the state commissions are required to designate providers as ETCs. 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b). Designation as an ETC is required if a provider is to receive federal

universal service funding. ETC designation is also required to receive funding from some, but not all, state universal service programs.

The FCC established a set of minimum criteria that all ETCs must meet. These are codified in the federal rules. 47 U.S.C. § 214(e)(1), 47 C.F.R. § 54.101(a). The 1996 Telecommunications Act states that “States may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service.” 47 U.S.C § 254(f). A court upheld the states’ right to impose additional conditions on ETCs in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5<sup>th</sup> Cir. 1999). While states must designate multiple ETCs if more than one provider meets the requirements and requests that status in a non-rural area, it must determine that it is in the public interest before designating more than one ETC in a rural area. 47 C.F.R. § 54.201. The Commission has already designated one ETC in each rural area.

In the year 2000, the Commission promulgated rules covering ETC designations and requirements in Wisconsin. Wis. Admin. Code § PSC 160.13. Those rules govern the process for ETC designation and set forth a minimum set of requirements for providers seeking ETC designation from the Commission. The application filed by Nextel asks that it be designated as an ETC for federal purposes only. It states that it is not seeking designation as an ETC for state purposes and, therefore, is not required to meet the additional state requirements.

States must examine the federal requirements, but are allowed to create additional requirements. Wisconsin has done so. The Commission’s requirements for ETC designation clarify and expand upon the more basic FCC rules. There is no provision in the rule for designation as an ETC for federal purposes only. If a provider seeks to be designated as an ETC, it must follow the procedures and requirements in Wis. Admin. Code § PSC 160.13 and, if such

a designation is granted, that designation serves to qualify the provider for both state and federal universal service funding. However, Wis. Admin. Code § PSC 160.01(2)(b) provides that:

Nothing in this chapter shall preclude special and individual consideration being given to exceptional or unusual situations and upon due investigation of the facts and circumstances involved, the adoption of requirements as to individual providers or services that may be lesser, greater, other or different than those provided in this chapter.

Nextel's request for ETC status presents an unusual situation. The wireless industry, its customary practices, and its usual customer base are quite different than those of wireline companies. Additionally, Nextel has stated that it has no desire to obtain state USF money. The Commission finds that under the particular circumstances of this case, it is reasonable to adopt different ETC requirements for Nextel to meet, and to grant ETC status to Nextel with certain limitations.

Because Nextel only wishes to obtain federal USF support, the Commission shall adopt the federal requirements for ETC status as the requirements that Nextel must meet to obtain ETC status. The federal requirements are found in 47 U.S.C. § 214(e)(1) and 47 C.F.R. §§ 54.101(a), 54.405 and 54.411. Further, the Commission relieves Nextel from ETC obligations other than those imposed under federal law. However, since Nextel will not be subject to the state requirements and state obligations, the Commission requires that Nextel not apply for state USF money. If Nextel ever does apply for state USF money, then all of the state requirements for and obligations of ETC status shall again be applicable to Nextel.

The Commission finds that Nextel has met the requirements for ETC designation; it will offer supported service to all customers in its designation areas and will advertise these services. In the FCC Declaratory Ruling *In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public*

*Utilities Commission*, FCC 00-248 (released 8/10/00), par. 24 (South Dakota Decision) the FCC has stated:

A new entrant can make a reasonable demonstration to the state commission of its capability and commitment to provide universal service without the actual provision of the proposed service. There are several possible methods for doing so, including, but not limited to: (1) a description of the proposed service technology, as supported by appropriate submissions; (2) a demonstration of the extent to which the carrier may otherwise be providing telecommunications services within the state; (3) a description of the extent to which the carrier has entered into interconnection and resale agreements; or, (4) a sworn affidavit signed by a representative of the carrier to ensure compliance with the obligation to offer and advertise the supported services.

If this is sufficient for a new entrant, it would seem to be even more so for someone who has already started to serve portions of the exchanges. Nextel submitted an affidavit ensuring compliance and, as mentioned earlier, is not only providing service in other areas of the state but also in parts of the areas for which it has requested ETC status.

The Commission finds that Nextel meets the requirement to offer service to all requesting customers. It has stated in its application and comments that it will do so. Many filing comments argue that the applicant will not provide service to all customers in the indicated exchanges and thus, because of the issue of “cellular shadows,” the applicant will not meet the same standard that is applied to wireline providers. However, this is a case where “the devil is in the details.” It is true that the purpose of universal service programs is to ensure that customers who might not otherwise be served at affordable rates by a competitive market still receive service. However, like for wireline companies, access to high cost assistance is what helps ensure that service is provided. For Nextel, access to high cost assistance is exactly what will make expanding service to customers requesting service in the areas for which it is designated as an ETC “commercially reasonable” or “economically feasible.” As the FCC has said:

A new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request. South Dakota Decision, par. 17.

Nextel, like wireline ETCs, must fulfill this mandate, and access to high cost funding is what will help make doing so possible. The issue of “dead spots” is not significantly different from a wireline ETC that does not have its own lines in a portion of an exchange, perhaps a newly developed area. After obtaining a reasonable request for service, the wireline is required to find a way to offer service, either through extending its own facilities or other options. So too, Nextel must be given a reasonable opportunity to provide service to requesting customers, whether through expansion of its own facilities or some other method.

Nextel has also stated in its affidavit, application, and comments that it will advertise the designated services as required under 47 U.S.C. § 214(e)(1)(B), including the availability of low income programs.

Other objections to Nextel’s designation focus on an alleged inability to meet certain additional state requirements in Wis. Admin. Code § PSC 160.13. These are moot, however, since the Commission has adopted different requirements for Nextel.

Some of the exchanges for which Nextel seeks ETC status are served by non-rural ILECs (SBC or Verizon). Under Wis. Admin. Code § PSC 160.13(3) and 47 U.S.C. § 251(e)(2), the Commission must designate multiple ETCs in areas served by such non-rural companies. However, the Commission may only designate multiple ETCs in an area served by a rural company if designating more than one ETC is in the public interest. Some of the exchanges for which Nextel seeks ETC status are served by rural telephone companies.

The Commission finds that designating Nextel as an additional ETC in these areas is in the public interest. In its determination, the Commission is guided by the Wis. Stat. §196.03(6) factors to consider when making a public interest determination:

- (a) Promotion and preservation of competition consistent with ch. 133 and s. 196.219.
- (b) Promotion of consumer choice.
- (c) Impact on the quality of life for the public, including privacy considerations.
- (d) Promotion of universal service.
- (e) Promotion of economic development, including telecommunications infrastructure deployment.
- (f) Promotion of efficiency and productivity.
- (g) Promotion of telecommunications services in geographical areas with diverse income or racial populations.

The Commission finds that designating Nextel as an ETC in areas served by rural companies will increase competition in those areas and, so, will increase consumer choice. While it is true that Nextel is currently serving in at least some of these areas, the availability of high cost support for infrastructure deployment will allow Nextel to expand its availability in these areas. Further, designation of another ETC may spur ILEC infrastructure deployment and encourage further efficiencies and productivity gains. Additional infrastructure deployment, additional consumer choices, the effects of competition, the provision of new technologies, a mobility option and increased local calling areas will benefit consumers and improve the quality of life for affected citizens of Wisconsin. As a result, the Commission finds that it is in the public interest to designate Nextel as an ETC in the areas served by rural telephone companies for which it has requested such designation.<sup>2</sup>

The areas for which Nextel is granted ETC status vary. Wis. Admin. Code § PSC 160.13(2) states that the areas in which a provider shall be designated as an ETC depend on the

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<sup>2</sup> Eighteen other state commissions and the FCC have approved wireless ETC applications as second ETCs in rural areas on similar grounds.

nature of the ILEC serving that area. If the ILEC is a non-rural telephone company, the designation area is the ILEC's wire center. The FCC has urged states not to require that competitive ETCs be required to offer service in the entire territory of large ILECs. It has found that such a requirement could be a barrier to entry. *Report and Order in the Matter of Federal-State Joint Board on Universal Service*, FCC 97-157 (released 5/8/97) pars. 176-177 (First Report and Order). Wisconsin's rule provision resolves this federal concern. As a result, Nextel is granted ETC status in the SBC and Verizon wire centers for which it requested such status, to the extent that such wire centers are located within the state.

Wis. Admin. Code § PSC 160.13(2) provides that if the ILEC is a rural telephone company, the ETC designation area is different. For an area served by a rural telephone company, the designation area is generally the entire territory (study area) of that rural company. A smaller designation area is prohibited unless the Commission designates and the FCC approves a smaller area. 47 C.F.R. § 54.207(b). Nextel's application contained a list of rural telephone company areas for which it requested ETC status. Attachment B, prepared by the Commission, show the rural areas for which it believes Nextel is seeking ETC status. If this list is not accurate, Nextel is ordered to submit to the Commission a revised list, in the same format as the attachment to this order, by October 31, 2003.

The Commission also grants ETC status to Nextel in the areas for which it is seeking designation for the entire territory of a rural telephone company, to the extent that such exchanges are located within the state. Finally, where Nextel is asking for ETC designation in some, but not all, parts of the territory of a rural telephone company, the Commission conditionally grants ETC status in the areas for which Nextel has requested such designation, to the extent that such exchanges are located within the state. However, Nextel must apply to the

FCC for approval of the use of a smaller area in such a designation. 47 C.F.R. § 54.207(c)(1). If the FCC approves use of the smaller area, then Nextel's ETC status for the smaller area(s) becomes effective. If the FCC does not approve use of the smaller area(s), then Nextel's conditional ETC status for such an area is void. In such a case, if Nextel determines that it then wants to apply for ETC status in the entire territory of the rural company, it may submit a new application requesting such designation.

The Commission grants this conditional status after having considered the changing market and the reason why the limitations on ETC designation in rural areas was created. Originally, there were concerns about "cherry picking" or "cream skimming." At that time, the USF support was averaged across all lines served by a provider within its study area. The per line support was the same throughout the study area. The concern was that competitive companies might ask for ETC designation in the parts of a rural company's territory that cost less to serve. It could thereby receive the averaged federal high-cost assistance while only serving the low-cost areas of the territory, while the ILEC received federal high-cost assistance but had to serve the entire territory, including the high-cost areas. First Report and Order, par. 189. As a result, the FCC found that unless otherwise approved by both the state and the FCC, a competitor seeking ETC status in the territory of a rural company must commit to serving the entire territory. First Report and Order, par. 189.

However, since that time, the USF funding mechanisms have changed. Currently, a competitive ETC gets the same amount of federal high-cost assistance per line as the ILEC. An ILEC has the option to target the federal high-cost assistance it receives so that it receives more USF money per line in the parts of the territory where it costs more to provide service, and less federal USF money in the parts of the territory where it costs less to provide service. *In the*

*Matter of Multi-Association Group (MAG) Plan*, FCC 01-157 (released 5/23/01), par. 147.

(MAG Order) Since the competitive ETC receives the same per line amount as the ILEC, if it chooses to only serve the lower cost parts of the territory, then it receives only the lower amount of federal USF money. As a result, as recognized by the FCC, the concerns about “cherry picking” and “cream skimming” are largely moot. *In the Matter of Reconsideration of Western Wireless Corporation’s Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, FCC 01-311 (released 10/16/01), par. 12.

In the MAG Order, rural telephone companies were given the opportunity to choose a disaggregation and targeting method or to not disaggregate and target USF support. MAG Order, pars. 147-154. Companies were allowed to choose one of three targeting paths. Some of the companies in whose territory Nextel is seeking ETC designation chose Path One (no targeting) and some chose Path Three (targeting). If a competitive ETC is named in all, or part, of the service territory of a rural company, that company may ask the Commission to allow it to choose another Path. The FCC believed that state involvement in path changes gave competitors some certainty as to the amount of per line support available while preventing a rural company from choosing or moving to a different path for anti-competitive reasons. MAG Order, par. 153. Some of the companies in whose territory Nextel is seeking ETC designation have disaggregated and targeted USF support, and some have not. However, the Commission may allow a company to change paths when a competitive ETC is designated in a rural company’s territory.

#### **Requests for Hearing**

In accordance with the Notice Requesting Comments, dated September 12, 2003, the Commission received eight filings, four of which requested, on various grounds, the Commission conduct a contested case hearing before deliberation of the application. CenturyTel, Inc. and

TDS Telecom Corporation claimed a right to a hearing under Wis. Admin. Code § PSC 160.13(3) and Wis. Stat. § 227.42. WSTA Small Company Committee and WSTA ILEC Division also suggested that the Commission should hold a contested case hearing. Citizens Utility Board (CUB) also claimed a right to a hearing under Wis. Stat. § 227.42. The law, however, does not require the Commission conduct a hearing in this docket as requested. Furthermore, if “notice and opportunity for hearing” as provided by Wis. Stat. § 196.50(2)(f) is applicable in this case, or if process is due to the current ETCs in the rural areas at issue on any other basis, the Notice Requesting Comments, dated September 12, 2003, satisfies this requirement.

CenturyTel, Inc. and TDS Telecom Corporation claimed a right to a hearing under Wis. Admin. Code § PSC 160.13(3) and Wis. Stat. § 227.42.

Wis. Admin. Code § PSC 160.13 (3) states:

For an area served by an incumbent local exchange service provider that is a rural telephone company, the commission may only designate an additional eligible telecommunications carrier after finding that the public interest requires multiple eligible telecommunications carriers, pursuant to federal law and s. 196.50 (2), Stats. For an area served by an incumbent local exchange service provider that is not a rural telephone company, the commission may designate an additional eligible telecommunications carrier without making such a finding.

Wis. Stat. § 196.50(2), designates the process to certify a telecommunications utility. Wis. Stat. § 196.50(2), states in part, “. . . after notice and opportunity for hearing, that the applicant possesses sufficient technical, financial and managerial resources to provide telecommunications service to any person within the identified geographic area.” According to the rule and statute it would appear that notice and opportunity for hearing is a required procedure in the instant case.

Wis. Stat. § 196.50(2), however, does not apply to an application for ETC status of a wireless company to be an additional ETC in a rural area. Wis. Stat. § 196.202,<sup>3</sup> expressly restricts Commission jurisdiction over wireless providers. This statute prevents the Commission from applying almost every provision of Wis. ch. 196, to wireless providers, except for Wis. Stat. § 196.218(3).<sup>4</sup> This section only applies if, “the commission promulgates rules that designate [cellular] providers as eligible to receive universal service funding under both the federal and state universal service fund programs.” Wis. Stat. § 196.218(3), mandates telecommunications providers contribute to the Wisconsin Universal Service Fund (WUSF). (Wireless providers currently have been exempted.) This section, however, is wholly unrelated to the requirements for eligibility to receive money from the WUSF and, otherwise, unrelated to this case.<sup>5</sup>

The Commission cannot apply Wis. Stat. § 196.50(2), to wireless providers. The Commission, therefore, cannot proceed under Wis. Stat. § 196.50(2)(f), when evaluating the

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<sup>3</sup> Wis. Stat. § 196.202, states:

**Exemption of commercial mobile radio service providers. (2) Scope of regulation.** A commercial mobile radio service provider is not subject to ch. 201 or this chapter, except as provided in sub. (5), and except that a commercial mobile radio service provider is subject to s. 196.218 (3) if the commission promulgates rules that designate commercial mobile radio service providers as eligible to receive universal service funding under both the federal and state universal service fund programs. If the commission promulgates such rules, a commercial mobile radio service provider shall respond, subject to the protection of the commercial mobile radio service provider's competitive information, to all reasonable requests for information about its operations in this state from the commission necessary to administer the universal service fund. **(5) Billing.** A commercial mobile radio service provider may not charge a customer for an incomplete call.

<sup>4</sup> Wis. Stat. § 196.218 (3), states, in part:

**Contributions to the fund. (a) 1.** Except as provided in par. (b), the commission shall require all telecommunications providers to contribute to the universal service fund beginning on January 1, 1996. determined by the commission under par. (a) 4.

<sup>5</sup> Like the Legislature, Congress has also limited the state role in regulating on wireless carriers. 47 U.S.C. § 332(c)(3); *Bastien v. AT&T Wireless Services, Inc.*, 205 F.3d 983 (7th Cir. 2000).

ETC application of a wireless provider. As a matter of law, the reference to Wis. Stat. § 196.50(2)(b)(f), in Wis. Admin Code § PSC 160.13, cannot apply to ETC applications of wireless providers, including Nextel.

Wis. Stat § 227.42 provides a right to a hearing, treated as a contested case, to any person filing a written request for a hearing with an agency who meets the following four part test:

- (a) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;
- (b) There is no evidence of legislative intent that the interest is not to be protected;
- (c) The injury to the person requesting a hearing is different in kind or degree from injury to the public caused by the agency action or inaction; and
- (d) There is a dispute of material fact.

CenturyTel, Inc. and TDS Telecom Corporation own local exchange telephone companies that provide essential telecommunications service as ETCs in the rural areas at issue. These companies are competitors of Nextel. On this basis, these companies claim they have a substantial interest protected by law, and will suffer special injury based on the ETC designation of Nextel. Federal law and state law, however, do not create a substantial, or property, interest in exclusive ETC status for incumbent rural ETCs. *Alenco Communications v. FCC*, 201 F.3d 608 (2000) (“The purpose of universal service is to benefit the customer, not the carrier.”); *WITA v. WUTA*, 65 P.3d 319 (2003); *In re Application of GCC License Corp.*, 647 N.W.2d 45, 52, 264 Neb. 167, 177 (2002). (“[r]ather, customers’ interest, not competitors’, should control agencies’ decisions affecting universal service” and that “[t]he Telecommunications Act does not mention protecting the private interests of incumbent rural carriers, who are often exclusive ETCs simply by default as the sole service provider operating in a

particular area.”) *See also, State ex rel. 1<sup>st</sup> Nat. Bank v. M&I Peoples Bank*, 95 Wis. 2d 303, 311 (1980). (Economic injury as the result of lawful competition does not confer standing.); *MCI Telecommunications v. Pub. Serv. Comm.*, 164 Wis. 2d 489, 496, 476 N.W.2d 575 (Ct. App. 1991); and *Wisconsin Power & Light v. PSC*, 45 Wis. 2d 253 (1969) (“ . . . the predominant purpose underlying the public utilities law is the protection of the consuming public rather than the competing utilities.”)

In addition, these companies also claim that granting Nextel ETC status will reduce the amount of USF funds available to the public. As explained above, such result does not injure companies’ protected interest. As explained below, increasing the number of carriers eligible for federal USF money will increase the amount of federal USF dollars brought into Wisconsin. Moreover, companies’ claim is entirely speculative.

WSTA Small Company Committee and WSTA ILEC Division also suggested that the Commission should hold a contested case hearing. These organizations represent local exchange telephone companies that provide essential telecommunications service as ETCs in the rural areas at issue who are competitors of Nextel. These comments suggest the Commission hold a contested case hearing. These organizations, however, did not invoke Wis. Stat. § 227.42 or attempt to apply the standards therein. Had these organizations claimed such a right to a hearing under Wis. Stat. § 227.42, the same analysis would apply to them as described for the CenturyTel, Inc. and TDS Telecom Corporation claim.

CUB also claims a right to a hearing under Wis. Stat. § 227.42. CUB further requests that the Commission consolidate ten pending ETC applications of wireless providers into one contested case for investigation of common issues.

CUB asserts it has a substantial interest protected by law, and will suffer special injury based on the ETC designation of Nextel because it claims to represent customers in the geographic area in which the applicant seeks ETC designation. As customers of the current ETC in that area, and as payees into the universal service fund, its members have a substantial interest that fund money is not wasted through certification of an inappropriate carrier. The federal USF, however, provides a benefit to customers through the assistance of carriers who commit to providing service in high-cost areas. The designation of more than one ETC in a particular high-cost area allows more carriers providing service in rural Wisconsin, such as Nextel, to tap into money collected on a nation-wide basis so that more services and more provider choices can be afforded to these customers. As such, far from threatening their substantial interests, ETC designation, like the instant one, necessarily provides a benefit to customers. On this basis, a hearing was not required by CUB's request.

CUB asserted that it meets the standards of Wis. Stat. § 227.42(1)(d), because it disputes the factual assertions made by the applicant that allowing it to receive ETC status will further the public interest by bringing the benefits of competition to underserved marketplaces and that the application provides the Commission with enough information regarding what services will be offered and at what cost to support it claims ETC designation is in the public interest. These assertions amount to a generalized challenge regarding the sufficiency of Nextel's application. A hearing, however, is not required on such basis. Wis. Stat. § 227.42(1), contemplates that a requester provide some showing that it meets the four part test. CUB fails to present any

facts that either contradict the assertions of the applicant or demonstrate that any of CUB's alleged deficiencies in the application are fact-based and material.

All filers requesting a hearing state or allude to the cumulative effect of granting the ten pending wireless ETC applications as an appropriate issue in this docket. The Commission, however, has not consolidated these applications into one case. The ETC designation process is based on the application of an individual carrier to the standards Wis. Admin. Code § PSC 160.13. Issues regarding the cumulative impact of this decision, and decisions like it, are not before the Commission.

The law does not require the Commission conduct a hearing in this docket. If "notice and opportunity for hearing" as provided by Wis. Stat. § 196.50(2)(f) is applicable in this case, or if process is due to the current ETCs in the rural areas at issue on any other basis, the Notice Requesting Comments, dated September 12, 2003, satisfies this requirement. *Waste Management of Wisconsin v. DNR*, 128 Wis. 2d 59, 78, 381 N.W.2d 318 (1985). (An appropriate "opportunity for hearing" may be exclusively through written comments.)

### **Order**

1. Nextel is granted ETC status in the non-rural wire centers indicated in its application, to the extent the wire centers are located within the state.
2. Nextel is granted ETC status in the areas for which it has requested such designation where the request includes the entire territory of a rural telephone company, to the extent the areas are located within the state.
3. Nextel is granted ETC status in the areas for which it has requested such designation where the request does not include the entire territory of a rural telephone company, to the extent

the areas are located within the state, conditioned upon the FCC approving the use of the smaller areas.

4. Nextel shall file a revised list of rural areas for which it is seeking ETC status by October 31, 2003, if the list attached to this order is inaccurate. The revised list shall use the same format as the attachment.

5. Nextel must request that the FCC approve the use of an area smaller than the entire territory of certain rural telephone companies (listed in an attachment to this order) when granting ETC status in those areas.

6. If the FCC does not approve the use of areas smaller than the entire territory of a rural telephone company when granting ETC status in those areas, then the conditional grant of ETC status in this order is void.

7. Nextel shall not apply for state USF support. If it ever does file for such support, the state eligibility requirements for, and obligations of ETC status, shall immediately apply to it.

8. Based on the affidavit of Donald J. Manning, Vice President and General Counsel, Nextel is an ETC within the meaning of 47 U.S.C. § 214 (c) and is eligible to receive funding pursuant to 47 U.S.C. § 254 (2). This order constitutes the certification to this effect by the Commission.

9. The requests for a contested case hearing by CenturyTel, Inc., TDS Telecom Corp., CUB, WTSA Small Company Committee, and WSTA ILEC Division are rejected.

10. Jurisdiction is maintained.

Dated at Madison, Wisconsin, \_\_\_\_\_

By the Commission:

\_\_\_\_\_  
Lynda L. Dorr  
Secretary to the Commission

LLD:PRJ:cdg:G:\ORDER\PENDING\8081-TI-101.doc

See attached Notice of Appeal Rights

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in Wis. Stat. § 227.01(3), a person aggrieved by the order has the further right to file one petition for rehearing as provided in Wis. Stat. § 227.49. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98

APPENDIX A

This proceeding is not a contested case under Wis. Stat. Ch. 227, therefore there are no parties to be listed or certified under Wis. Stat. § 227.47. However, an investigation was conducted and the persons listed below participated.

PUBLIC SERVICE COMMISSION  
OF WISCONSIN  
(Not a party, but must be served)  
610 North Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

MS STEPHANIE L MOTT ATTY  
REINHART BOERNER VAN  
DEUREN  
PO BOX 2018  
MADISON WI 53701-2018

MR PETER L GARDON  
REINHART BOERNER VAN  
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MR NICK LESTER  
WSTA  
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DEINARD PA  
150 SOUTH FIFTH STREET  
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MINNEAPOLIS MN 55402

APPENDIX B

**Rural Operating Companies for which Nextel requests ETC certification for the entire service territory:**

Amherst Tel. Co.	Frontier Communications – Viroqua
Badger Telecom, Inc.	Frontier Communications – Wisconsin, Inc.
Bayland Tel. Co.	Grantland Telecom, Inc.
Belmont Tel. Co.	Hillsboro Tel. Co.
Bloomer Tel. Co.	Indianhead Tel. Co.
Bonduel Tel. Co.	Lakefield Tel. Co.
Bruce Tel. Co., Inc.	Lemonweir Valley Tel. Co.
Chibardun Tel. Co-op.	Manawa Tel. Co.
Citizens Tel Co-op. - Wis.	Marquette-Adams Tel. Co-op.
Cochrane Tel. Co-op.	Mosinee Tel. Co.
Cuba City Exchange Tel. Co.	Nelson Tel. Co-op.
Dickeyville Tel. Co.	Northeast Tel. Co.
CenturyTel of the Midwest – Kendall	Siren Tel. Co., Inc.
CenturyTel of Wisconsin – Fairwater- Brandon-Alto	Stockbridge & Sherwood Tel. Co.
CenturyTel of Wisconsin – Forestville	Telephone USA of Wisconsin, LLC
CenturyTel of Wisconsin – Larsen- Readfield	Tenney Tel. Co.
CenturyTel of Monroe County, LLC	Tri-County Tel. Co-op.
EastCoast Telecom, Inc.	Union Tel. Co.
Farmers Independent Tel. Co.	Vernon Tel. Co-op.
Farmers Tel. Co. of Wis.	Waunakee Tel. Co.
Frontier Communications – Mondovi	West Wisconsin Tel. Co-op.
	Wittenberg Tel. Co.
	Wood County Tel. Co.

**Rural Operating Companies for which Nextel requests ETC certification for individual exchanges, but not the whole service territory:**

CenturyTel of the Midwest – Wisconsin	Casco Coleman Freemont Goodman Harmony	Platteville Shell Lake Thorp Wayside Weyauwega
CenturyTel of the Midwest – WI / Northwest	Boyd Cadott Chetek De Forest Poynette	Ripon Tomah Warrens Wild Rose
Scandinavia Tel. Co.	Iola	
CenturyTel of Northwest Wisconsin, LLC	Lake Nebagamon	
CenturyTel of Northern Wisconsin, LLC	Gilman Holcombe Jim Falls	
CenturyTel of Central Wis.	Alma Center Arcadia Augusta Bangor Black Creek Black River Falls Centerville Cleghorn Denmark Fairchild Fall Creek Fountain City Galesville	Holmen Luxemburg Merrilan Mindoro New Franken Osseo Pickett Rosendale Seymour Shicoton Trempealeau Wautoma

**PEABODY EXHIBIT NO. 10**

**PEABODY EXHIBIT NO. 10**

BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION

APPLICATION OF  
NPCR, INC. d/b/a NEXTEL PARTNERS  
FOR DESIGNATION AS AN ELIGIBLE  
TELECOMMUNICATIONS CARRIER  
UNDER 47 U.S.C. § 214(e)(2)

DOCKET NO. 03-UA-0256

ORDER

THIS DAY, there came on for consideration by the Mississippi Public Service Commission ("Commission") the Application of NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners") for designation as a carrier eligible for federal universal service support pursuant to Section 214(e) of the Telecommunications Act of 1996 ("TA96"). The Commission, being fully apprised in the premises and having considered the documents, responses of Nextel Partners to discovery requests submitted by the Mississippi Public Utilities Staff ("MPUS"), and the record before it, as authorized by law and upon recommendation of the MPUS, finds as follows, to-wit:

1. On April 17, 2003, Nextel Partners filed with the Commission its Application pursuant to Section 214(e) of the Telecommunications Act of 1996 and Federal Communications Commission ("FCC") Rules 47 C.F.R. §§ 54.201 through 54.207, requesting designation as an Eligible Telecommunications Carrier ("ETC") for its current service area which includes the State of Mississippi (the "designated service area").
2. The Commission has jurisdiction to enter this Order, and entry hereof is in the public interest.
3. Due and proper notice of the Application was given to all interested persons as required by law and the Commission's Public Utilities Rules of Practice and Procedure.
4. BellSouth Telecommunications, Inc. ("BellSouth") intervened and became a party of record in this matter.

PEABODY  
EXHIBIT 10

5. Nextel Partners provides wireless telecommunications services throughout certain designated areas of the State of Mississippi pursuant to licenses issued by the FCC.

6. Pursuant to 47 U.S.C. § 214(e) and FCC Rule 47 C.F.R. § 54.201, to qualify under federal law as a telecommunications carrier eligible for universal service funding, carriers must satisfy certain requirements or qualify for a waiver of those requirements. An ETC must offer the following services:

- a. Voice grade access to the public switched network;
- b. Access to free of charge "local usage" defined as an amount of minutes of use of exchange service;
- c. Dual tone multi-frequency signaling or its functional equivalent;
- d. Single-party service or its functional equivalent;
- e. Access to emergency services;
- f. Access to operator services;
- g. Access to directory assistance;
- h. Access to interexchange services;
- i. Toll limitations services for qualifying low-income customers.

7. Qualified ETCs must offer these services either using their own facilities or a combination of their own facilities and the resale of services of another facilities-based carrier. Further, ETCs must advertise the availability of, and the prevailing prices for, the universal services throughout the area in which they have been designated as an ETC. Nextel Partners satisfies these requirements and shall continue to comply with each of these provisions regarding service provision and offerings.

8. Nextel Partners will implement a program to advertise the availability of the above-referenced services and related charges using media of general distribution in its certificated service area as required by Section 254(e)(1)(B) of TA96 and Section 54.201(d)(2) of the FCC's Rules.

9. The Commission finds that Nextel Partners is capable of providing the services required for ETC designation and is capable of providing such services with an adequate degree of quality.

10. The Commission finds that Nextel Partners has committed to serve all subscribers upon request in its designated service area. Nextel Partners has committed to provide service either through its own facilities or a combination of its own facilities and resale.

11. Nextel Partners has not requested ETC designation for the exchanges of small rural carriers (independent telephone companies).

12. The Commission finds that an ETC designation to Nextel Partners can at a future time be modified or changed by subsequent Order of this Commission.

13. The Commission finds that ETC designation cannot be granted solely based on resale. Therefore, the Commission finds that Nextel Partners shall provide service either through its own facilities or a combination of its own facilities and resale to all subscribers upon request in its designated service area.

14. Nextel Partners shall also offer Lifeline and Linkup services pursuant to Nextel Partners' Lifeline and Linkup tariffs which were filed with this Commission on July 17, 2003 in this Docket.

The Commission, having jurisdiction of the parties and the subject matter, and having considered Nextel Partners' Application and the evidence in support thereof, finds that Nextel

Partners is entitled to be granted designation as an eligible telecommunications carrier throughout its designated service area in Mississippi based on timely complying with all conditions expressed in this Order.

IT IS, THEREFORE, ORDERED:

1. Nextel Partners is designated an Eligible Telecommunications Carrier in the State of Mississippi in the non-rural Designated Areas listed in Attachment 1 hereto. Nextel Partners shall provide service either through its own facilities or a combination of its own facilities and resale to all subscribers upon request in its designated service area.

2. This Commission retains continuing jurisdiction to review, modify, or revoke its designation of Nextel Partners as an ETC. Nextel Partners is conditionally designated an Eligible Telecommunications Carrier throughout the Designated Areas listed in Attachment 1. This ETC designation is for federal universal service funds, and is based on federal rules and guidelines as they exist today. Likewise, should the Universal Service Administrative Company or any other agency revise contribution or disbursement requirements that would directly impact the State of Mississippi and its consumers, the Commission retains its jurisdiction to review, modify and/or revoke its designation of Nextel Partners as an ETC. Additionally, should any information supplied by Nextel Partners in this docket be inaccurate, the designation of Nextel Partners as an ETC may be revoked.

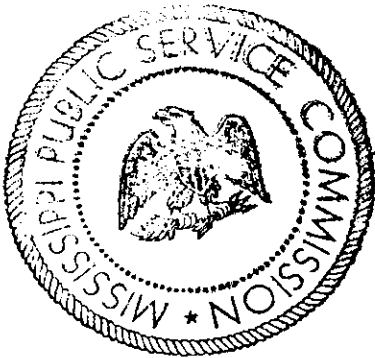
3. The entire file of the Commission, as well as all responses to all discovery requests of the MPUS, are specially made a part of the record in this matter.

4. This Order is effective as of the date hereof.

SO ORDERED, this the 27<sup>th</sup> day of September, 2003.

Chairman Michael Callahan voted aye; Vice Chairman Bo Robinson voted Aye;  
Commissioner Nielsen Cochran voted Aye.

MISSISSIPPI PUBLIC SERVICE COMMISSION



Michael Callahan  
MICHAEL CALLAHAN, Chairman

Bo Robinson  
BO ROBINSON, Vice Chairman

Nielsen Cochran  
NIELSEN COCHRAN, Commissioner

ATTEST: A TRUE COPY

Brian U. Ray  
BRIAN U. RAY, Executive Secretary

## **ATTACHMENT 1**

Designated Areas for which Nextel Partners  
Is Designated As An ETC

BELLSOUTH CORP BENTMSSU	BELLSOUTH CORP FORSMSMA
BELLSOUTH CORP BGCHMSSU	BELLSOUTH CORP FYTTMSMA
BELLSOUTH CORP BILXMSDI	BELLSOUTH CORP GLPTMSLY
BELLSOUTH CORP BNTNMSSU	BELLSOUTH CORP HDLBMSMA
BELLSOUTH CORP BOTNMSMA	BELLSOUTH CORP HPVLMSSU
BELLSOUTH CORP BRHNMSMA	BELLSOUTH CORP HRLYMSMA
BELLSOUTH CORP BRNDMSES	BELLSOUTH CORP HTBGMSMA
BELLSOUTH CORP BRWDMSMA	BELLSOUTH CORP HZLHMSMA
BELLSOUTH CORP CHNKMSSU	BELLSOUTH CORP KSCSMSMA
BELLSOUTH CORP CLNSMSMA	BELLSOUTH CORP LAKEMSMA
BELLSOUTH CORP CNTNMSMA	BELLSOUTH CORP LARLMSMA
BELLSOUTH CORP COVLMSSU	BELLSOUTH CORP LCDLMSMA
BELLSOUTH CORP CRSPMSMA	BELLSOUTH CORP LXTNMSMA
BELLSOUTH CORP CRTHMSMA	BELLSOUTH CORP MAGEMSMA
BELLSOUTH CORP CSVLMSSU	BELLSOUTH CORP MIZEMSMA
BELLSOUTH CORP DFFEMSMA	BELLSOUTH CORP MNASMSMA
BELLSOUTH CORP DKLBSMSMA	BELLSOUTH CORP MNDNMSMA
BELLSOUTH CORP EDWRMSDS	BELLSOUTH CORP MNTIMMSMA
BELLSOUTH CORP ELVLMSMA	BELLSOUTH CORP MRTNMSMA
BELLSOUTH CORP ENTRMSMA	BELLSOUTH CORP MSPNMSMA
BELLSOUTH CORP FLORMSMA	BELLSOUTH CORP MSTFMSCU

BELLSOUTH CORP MTOLMSMA  
BELLSOUTH CORP NWTNMSMA  
BELLSOUTH CORP OBDHMSMA  
BELLSOUTH CORP PCKNMSMA  
BELLSOUTH CORP PCYNMSMA  
BELLSOUTH CORP PGSNMSMA  
BELLSOUTH CORP PHLAMSMA  
BELLSOUTH CORP PLHTMSMA  
BELLSOUTH CORP PPVLMSMA  
BELLSOUTH CORP PRVSMSMA  
BELLSOUTH CORP PSCHMSLT  
BELLSOUTH CORP PSCHMSMA  
BELLSOUTH CORP QTMNMSMA  
BELLSOUTH CORP RCTNMSMA  
BELLSOUTH CORP RLFKMSMA  
BELLSOUTH CORP RLGHMSMA  
BELLSOUTH CORP RYMNMSDS  
BELLSOUTH CORP SMRLMSMA  
BELLSOUTH CORP SNRYMSMA  
BELLSOUTH CORP TMSBMSMA  
BELLSOUTH CORP TRRYMSMA  
BELLSOUTH CORP TYVLMSMA  
BELLSOUTH CORP UNINMSDS

BELLSOUTH CORP UTICMSDS  
BELLSOUTH CORP VNCLMSMA  
BELLSOUTH CORP WGNSMSMA  
BELLSOUTH CORP WNRDMSSU  
BELLSOUTH CORP WSSNMSMA  
BELLSOUTH CORP WYBOMSMA  
BELLSOUTH CORP YZCYMSMA

**RECEIVED**

**APR 30 2004**

**PUBLIC SERVICE  
COMMISSION**

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF:**

**PETITION OF NPCR, INC. d/b/a  
NEXTEL PARTNERS FOR  
DESIGNATION AS AN ELIGIBLE  
TELECOMMUNICATIONS CARRIER  
IN THE COMMONWEALTH OF KENTUCKY**

**CASE NO. 2003-00143**

**DIRECT TESTIMONY OF DON WOOD  
FOR NPCR, INC. d/b/a NEXTEL PARTNERS**

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. My name is Don J. Wood. I am a principal in the firm of Wood & Wood, an economic  
3 and financial consulting firm. My business address is 4625 Alexander Drive, Suite 125,  
4 Alpharetta, Georgia 30022.

5 Q. WHAT ARE YOUR RESPONSIBILITIES AT WOOD & WOOD?

6 A. I provide to consulting clients economic and regulatory analysis of the  
7 telecommunications, cable, and related convergence industries with an emphasis on  
8 economic policy, competitive market development, and cost-of-service issues.

9 Q. PLEASE DESCRIBE YOUR BACKGROUND AND EXPERIENCE.

10 A. I received a BBA in Finance with distinction from Emory University and an MBA with  
11 concentrations in Finance and Microeconomics from the College of William and Mary.  
12 My telecommunications experience includes employment at both a Regional Bell  
13 Operating Company ("RBOC") and an Interexchange Carrier ("IXC").

14 Specifically, I was employed in the local exchange industry by BellSouth  
15 Services, Inc. in its Pricing and Economics, Service Cost Division. My responsibilities  
16 included performing cost analyses of new and existing services, preparing documentation  
17 for filings with state regulatory commissions and the Federal Communications  
18 Commission ("FCC"), developing methodology and computer models for use by other  
19 analysts, and performing special assembly cost studies.

20 I was employed in the interexchange industry by MCI Telecommunications  
21 Corporation, as Manager of Regulatory Analysis for the Southern Division. In this  
22 capacity I was responsible for the development and implementation of regulatory policy

1 for operations in the southern U. S. I then served as a Manager in MCI's Economic  
2 Analysis and Regulatory Affairs Organization, where I participated in the development of  
3 regulatory policy for national issues.

4 Q. HAVE YOU PREVIOUSLY PRESENTED TESTIMONY BEFORE STATE  
5 REGULATORY COMMISSIONS?

6 A. Yes. I have testified on telecommunications issues before the regulatory commissions of  
7 thirty-five states, Puerto Rico, and the District of Columbia. I have also presented  
8 testimony regarding telecommunications issues in state, federal, and overseas courts,  
9 before alternative dispute resolution tribunals, and at the FCC. A listing of my previous  
10 testimony is attached to my testimony as **Exhibit DJW-1**.

11 Q. ARE YOU FAMILIAR WITH THE APPLICATION OF UNIVERSAL SERVICE  
12 MECHANISMS AT THE STATE AND FEDERAL LEVELS?

13 A. Yes. In the course of my professional experience, I have addressed issues regarding the  
14 design, implementation, and ongoing administration of universal service support  
15 mechanisms. I have also performed extensive analyses of the costs of service, including  
16 but not limited to network costs, incurred by telecommunications carriers to provide local  
17 exchange services and have specifically addressed the issue of how costs may vary  
18 among and between geographic areas. I was involved in the review and analysis of both  
19 the Hatfield/HAI cost model and the Benchmark Cost Proxy Model ("BCPM")  
20 considered by the FCC in CC Docket No. 96-45, and have presented testimony regarding  
21 the relative merits of both cost models on numerous occasions.

22 More recently, I have analyzed the applications of a number of carriers seeking  
23 designation as an Eligible Telecommunications Carrier ("ETC"), including applications

1 to be granted ETC status in areas serviced by both non-rural and rural Incumbent Local  
2 Exchange Companies ("ILECs"). To date, I have presented testimony regarding such  
3 applications in Alabama (decided by the FCC), Alaska, Colorado, Idaho, Indiana,  
4 Kansas, Minnesota, Montana, Oklahoma, Oregon, South Dakota, Texas, and West  
5 Virginia.

6 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

7 A. I have been asked by NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners") to address the  
8 public interest aspect of its application for ETC designation in Kentucky within the areas  
9 set forth in Attachment 1 to its Application.

10 Q. WHAT QUESTIONS ARE BEFORE THE COMMISSION IN THIS PROCEEDING?

11 A. For the areas identified in Attachment 1 to Nextel Partners' Application that are served by  
12 BellSouth and Alltel (formerly served by Verizon Communications), the relevant  
13 question before the Commission is simply the following: Has Nextel Partners committed  
14 to offer and advertise the nine supported services throughout the proposed service area?  
15 For the areas identified in Attachment 1 served by rural telephone companies ("RTCs"),  
16 there are two relevant questions: (1) Has Nextel Partners committed to offer and advertise  
17 the nine supported services throughout the proposed service area?, and (2) Is the  
18 designation of Nextel Partners as an ETC in the public interest?

19 Q. HAVE THESE QUESTIONS BEEN THE FOCUS OF THE PROCEEDINGS BEFORE  
20 OTHER STATE REGULATORS IN WHICH YOU PARTICIPATED?

21 A. Yes. Because the criteria for designation of ETCs are set forth in Section 214 of the  
22 Communications Act, these questions have been, as they must be, the focus of the review

1 made by the regulators in each case (state regulatory bodies where they had jurisdiction,  
2 the FCC where they did not). The state regulatory commissions, as well as the FCC,  
3 must apply the federal law to determine the eligibility of petitioners.

4 In direct contrast, the rural ILECs in these proceedings have sought to  
5 significantly broaden the scope of review and have attempted to put competition on trial.  
6 While such attempts have rarely been successful, they have often become distractions  
7 that unnecessarily consume the time and resources of all involved. Put directly, the  
8 purpose of this proceeding is *not*, as many rural LECs argue, to answer the question Is the  
9 introduction of competition for basic telecommunications services in rural areas in the  
10 public interest? That question has been answered and the policy direction has been set on  
11 a federal level by both Congress and the FCC. The questions to be addressed here  
12 concern the facts of Nextel Partners' Application.

13 Q. BASED UPON YOUR REVIEW OF THE COMPANY AND ITS APPLICATION, DO  
14 YOU BELIEVE THAT THE DESIGNATION OF NEXTEL PARTNERS AS AN ETC,  
15 AND THE COMPETITIVE ENTRY MADE POSSIBLE BY SUCH A DESIGNATION,  
16 WILL PROVIDE BENEFITS TO END USERS?

17 A. Yes. These competitive benefits have both a short term and long term component.

18 End users will benefit in the short term from a choice of suppliers that represents  
19 different technologies, and from choosing the technology that best meets their needs.  
20 They can also select from a much broader array of service and pricing plans, and again  
21 can choose the plan that best meets their individual needs. Over the longer term,  
22 consumers will benefit as competitive market forces act to make all providers, including  
23 the ILECs, more efficient and responsive to customer needs.

1 I fully support the FCC's conclusion that the entry of an additional ETC into a  
2 rural area can be expected to create the following benefits: "[to] provide incentives to the  
3 incumbent to implement new operating efficiencies, lower prices, and offer better service  
4 to its customers." Conversely, the FCC has found "no merit" in arguments that the  
5 designation of an additional ETC in a rural area will reduce investment incentives,  
6 increase prices, or reduce the service quality of the ILEC.

7 The short-term benefits of competitive entry, including lower prices, new service  
8 offerings, the availability of different technology, and the ability to diversify among  
9 suppliers, are important; but while they are important components of any public interest  
10 determination, they do not tell the whole story. In my experience, the long-term  
11 economic benefits of competition represent an equally important source of potential gain  
12 for consumers of telecommunications services in rural areas and for rural economic  
13 development. In a recent order, the FCC refers to the provision of "customer choice,  
14 innovative services, and new technologies" as benefits of competitive ETC designation in  
15 a rural area, and also explicitly notes that "competition will result not only in the  
16 deployment of new facilities and technologies, but will also *provide an incentive to the*  
17 *incumbent rural telephone companies to improve their existing network to remain*  
18 *competitive*" (emphasis added).<sup>1</sup> The FCC went on to conclude that "*competition may*  
19 *provide incentives to the incumbent to implement new operating efficiencies, lower*  
20 *prices, and offer better service to its customers* " (emphasis added).<sup>2</sup>

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<sup>1</sup> *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, Released December 26, 2000, paragraph 17.

<sup>2</sup> *Id.* paragraph 22.

1 Q. DO YOU HAVE ANY DIRECT EXPERIENCE WITH THE IMPACT OF  
2 COMPETITIVE ENTRY IN RURAL AREAS?

3 A. Yes. While competitive entry is important in urban and suburban areas, in my experience  
4 the existence of competitive alternatives in rural areas is even more important for at least  
5 two reasons:

6 **1. The existence of competitive options for telecommunications services,**  
7 **particularly the availability of wireless service, is important for rural**  
8 **economic development.**

9 When making investment and relocation decisions, companies consider the  
10 availability of telecommunications services in an area. Reliable voice services, data  
11 services, and wireless services with sufficient coverage all play a role in this process. In  
12 order to compete with their urban and suburban counterparts to attract investment and  
13 jobs, rural areas need for these services to be available.

14 **2. The availability of affordable and high-quality wireless service is**  
15 **extremely important in rural areas for health and safety reasons.**

16 Reliable mobile communications have a level of importance for people who live  
17 and work in rural areas that people living in urban areas often fail to appreciate. The  
18 availability of even the highest quality wireline service is no substitute for a mobile  
19 service with broad geographic coverage, simply because the wireline service is often  
20 physically not there when needed. In an area where fields being worked are far from the  
21 road, and where wireline phones along the roadway are few and far between, the  
22 availability of wireless communication can literally save a life.

23 Q. HAS NEXTEL PARTNERS COMMITTED TO OFFER AND ADVERTISE THE NINE  
24 SUPPORTED SERVICES THROUGHOUT THE PROPOSED SERVICE AREA?

1 A. Yes. Nextel Partners made that commitment in its Application. As described in more  
2 detail by Nextel Partners witness Scott Peabody, the Company stands ready and willing  
3 to meet this commitment.

4 Q. WILL NEXTEL PARTNERS OFFER SERVICES THAT PROVIDE BENEFITS TO  
5 CONSUMERS?

6 A. Yes. As described in the Application, Nextel Partners will provide the residents and  
7 businesses in the specified areas with important options. End users will be able to choose  
8 the technology – wireline or wireless – that best meets their individual needs. End users  
9 will also be able to choose from among rate plans that will allow them to more closely  
10 match the service that they receive (and pay for) with their calling patterns and  
11 frequency. Last, but certainly not least, end users will have greater access to the personal  
12 and public safety benefits of wireless service.

13 Q. IS THERE SOME FACT OR ISSUE THAT IS SPECIFIC TO NEXTEL PARTNERS,  
14 OR THE SERVICE AREAS WITHIN WHICH IT SEEKS ETC STATUS IN  
15 KENTUCKY, THAT WOULD OUTWEIGH THOSE BENEFITS?

16 A. No. Nextel Partners' desire to serve – and its commitment to do so – fully complies with  
17 the service obligations set forth in the Act and is consistent with that of other carriers that  
18 have been designated as an ETC in areas served by rural ILECs. Furthermore, Nextel  
19 Partners has made certain commitments set forth in the recent *Virginia Cellular Order* as  
20 discussed in more detail by Nextel Partners' witness Scott Peabody.

1 Q. YOU STATED THAT IN THE OTHER STATE PROCEEDINGS IN WHICH YOU  
2 HAVE PARTICIPATED, THE RURAL LECS HAVE SOUGHT TO IMPROPERLY  
3 BROADEN THE SCOPE OF THE PROCEEDING. PLEASE EXPLAIN.

4 A. In these other state proceedings, rural ILECs have asked state regulators to weigh the  
5 benefits and costs of permitting competitive entry into rural areas (specifically areas of  
6 low line density) and the benefits and costs of granting ETC status to more than one  
7 carrier in such an area. These questions are simply not relevant to the designation of an  
8 ETC. To the contrary, the relevant questions here are specific to Nextel Partners'  
9 showings in its Application.

10 As far as the public interest issue is concerned, it is the interests of the public –  
11 the consumers of telecommunications services – that must be considered. The interests  
12 of individual carriers, or categories of carriers, is not a significant element of the public  
13 interest determination. This is consistent with the FCC's stated principle of "competitive  
14 neutrality" in the operation of any rural universal service mechanism. The FCC and Fifth  
15 Circuit Court have been clear that the purpose of the federal universal service mechanism  
16 is to protect rural consumers of telecommunications services; its purpose is not to protect  
17 incumbent LECs:

18 The Act does *not* guarantee all local telephone service providers a sufficient  
19 return on investment; quite the contrary, it is intended to introduce competition  
20 into the market. Competition necessarily brings the risk that some telephone  
21 service providers will be unable to compete. The Act only promises universal  
22 service, and that is a goal that requires sufficient funding of *customers*, not  
23 *providers*. So long as there is sufficient and competitively neutral funding to  
24 enable all customers to receive basic telecommunications services, the FCC has  
25 satisfied the Act and is not further required to ensure sufficient funding of every  
26 local telephone provider as well (emphasis in original).<sup>3</sup>

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<sup>3</sup> *Alenco Communications, Inc. v. FCC*, 201 F.3d at 620, cited in *Fourteenth Report and Order*

1 This Commission will need to be watchful for efforts to re-litigate the FCC's decisions  
2 regarding the operation of the federal universal service mechanism in rural areas. The  
3 LECs typically ask state regulators to effectively set aside certain portions – but not  
4 others – of the FCC's Orders, and engage in a process of second guessing both Congress  
5 and the FCC regarding (1) the benefits of competitive entry, and (2) the most effective  
6 means of ensuring that consumers in rural areas have access to basic telecommunications  
7 services at reasonable rates.

8 Q. FOR WHAT GEOGRAPHIC AREAS IN KENTUCKY IS NEXTEL PARTNERS  
9 SEEKING ETC DESIGNATION?

10 A. As set forth in its Application, Nextel Partners is seeking designation as an ETC  
11 throughout each of the designated areas listed in Attachment 1 to its Application. For the  
12 areas served by Lewisport Telephone Company d/b/a TDS Telecom; Logan Telephone  
13 Cooperative, Inc.; Mountain Rural Telephone Cooperative Corporation, Inc.; Peoples  
14 Rural Telephone Cooperative Corporation, Inc.; and South Central Rural Telephone  
15 Cooperative Corporation, Inc., the designated area is the entire study area of the RTC.  
16 For the exchanges served by BellSouth and Alltel, Nextel Partners is requesting  
17 designation throughout the area covered by those wire centers.

18 Q. IS THE DESIGNATION OF NEXTEL PARTNERS AS AN ETC IN THE AREAS  
19 SERVED BY THE RTCS IN PUBLIC INTEREST?

20 A. Yes. Nextel Partners will provide customer alternatives in terms of pricing and  
21 technology. The operation of Nextel Partners as an ETC can be expected to benefit

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at ¶ 27.

1 consumers directly (through pricing, convenience, and public safety opportunities) and  
2 indirectly (as an important part of rural economic development).

3 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

4 A. Yes.

5

***Vita of Don J. Wood***

*30000 Mill Creek Avenue, Suite 395, Alpharetta, Georgia 30022*

*Voice 770.475.9971, Facsimile 770.475.9972*

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**CURRENT EMPLOYMENT**

Don J. Wood is a principal in the firm of Wood & Wood. He provides economic and regulatory analysis services in telecommunications, cable, IP, and related convergence industries, specializing in economic policy related to the development of competitive markets and cost of service issues. In addition, Mr. Wood advises industry associations on regulatory and economic policy, and assists investors in their evaluation of investment opportunities in the telecommunications industry. The scope of his work has included landline and wireless voice communications, data services, and emerging technologies.

As a consultant, Mr. Wood has assisted his clients in responding to the challenges and business opportunities of the industry both before and subsequent to the Telecommunications Act of 1996. Prior to his work as a consultant, Mr. Wood was employed in a management capacity at a major Local Exchange Company and an Interexchange Carrier. In each capacity he has been directly involved in both the development and implementation of regulatory policy and business strategy.

As a part of his regulatory practice, Mr. Wood has presented testimony before the administrative regulatory bodies of thirty-five states, the District of Columbia, and Puerto Rico, and has prepared comments and testimony for filing with the Federal Communications Commission. The subject matter of his testimony has ranged from broad policy issues to detailed cost analysis.

Mr. Wood has also presented testimony in state, federal, and overseas courts regarding business plans and strategies, competition policy, and cost of service issues. He has presented studies of the damages incurred by plaintiffs and has provided rebuttal testimony to damage calculations performed by others. Mr. Wood has also testified in alternative dispute resolution proceedings conducted pursuant to both AAA and CPR rules.

Mr. Wood is certified as a Commercial Mediator in the state of Georgia.

**PREVIOUS INDUSTRY EMPLOYMENT**

**Klick, Kent & Allen/FTI Consulting, Inc.**

Regional Director.

**GDS Associates, Inc.**

Senior Project Manager.

**MCI Telecommunications Corporation**

Manager of Regulatory Analysis, Southeast Division.

Manager, Corporate Economic Analysis and Regulatory Affairs.

**BellSouth Services, Inc.**

Staff Manager.

**EDUCATION**

**Emory University, Atlanta, Ga.**

BBA in Finance, with Distinction.

**College of William and Mary, Williamsburg, Va.**

MBA, with concentrations in Finance and Microeconomics.

**TESTIMONY - STATE REGULATORY COMMISSIONS:**

**Alabama Public Service Commission**

Docket No. 19356, Phase III: Alabama Public Service Commission vs. All Telephone Companies Operating in Alabama, and Docket 21455: AT&T Communications of the South Central States, Inc., Applicant, Application for a Certificate of Public Convenience and Necessity to Provide Limited IntraLATA Telecommunications Service in the State of Alabama.

Docket No. 20895: In Re: Petition for Approval to Introduce Business Line Termination for MCI's 800 Service.

Docket No. 21071: In Re: Petition by South Central Bell for Introduction of Bidirectional Measured Service.

Docket No. 21067: In Re: Petition by South Central Bell to Offer Dial Back-Up Service and 2400 BPS Central Office Data Set for Use with PulseLink Public Packet Switching Network Service.

Docket No. 21378: In Re: Petition by South Central Bell for Approval of Tariff Revisions to Restructure ESSX and Digital ESSX Service.

Docket No. 21865: In Re: Petition by South Central Bell for Approval of Tariff Revisions to Introduce Network Services to be Offered as a Part of Open Network Architecture.

Docket No. 25703: In Re: In the Matter of the Interconnection Agreement Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. 25704: In Re: Petition by AT&T Communications of the South Central States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South Incorporated and CONTEL of the South, Inc. Concerning Interconnection and Resale under the Telecommunications Act of 1996.

Docket No. 25835: In Re: Petition for Approval of a Statement of Generally Available Terms and Conditions Pursuant to §252(f) of the Telecommunications Act of 1996 and Notification of Intention to File a §271 Petition for In-Region InterLATA Authority with the Federal Communications Commission Pursuant to the Telecommunications Act of 1996.

Docket No. 26029: In Re: Generic Proceeding - Consideration of TELRIC Studies.

Docket No. 25980: Implementation of the Universal Support Requirements of Section 254 of the Telecommunications Act of 1996.

Docket No. 27091: Petition for Arbitration by ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. 27821: Generic Proceeding to Establish Prices for Interconnection Services and Unbundled Network Elements.

Docket Nos. 27989 and 15957: BellSouth "Full Circle" Promotion and Generic Proceeding Considering the Promulgation of Telephone Rules Governing Promotions.

Docket No. 28841: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

**The Regulatory Commission of Alaska**

Case No. U-02-039: In the Matter of Request by Alaska Digitel, LLC for Designation as a Carrier Eligible To Receive Federal Universal Service Support Under the Telecommunications Act of 1996.

**Arkansas Public Service Commission**

Docket No. 92-337-R: In the Matter of the Application for a Rule Limiting Collocation for Special Access to Virtual or Physical Collocation at the Option of the Local Exchange Carrier.

**Public Utilities Commission of the State of California**

Rulemaking 00-02-005: Order Instituting Rulemaking on the Commission's Own Motion into Reciprocal Compensation for Telephone Traffic Transmitted to Internet Service Provider Modems.

Application Nos. 01-02-024, 01-02-035, 02-02-031, 02-02-032, 02-02-034, 02-03-002: Applications for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Network element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

**Public Utilities Commission of the State of Colorado**

Docket No. 96A-345T: In the Matter of the Interconnection Contract Negotiations Between AT&T Communications of the Mountain States, Inc., and US West Communications, Inc., Pursuant to 47 U.S.C. Section 252. Docket No. 96A-366T: In the Matter of the Petition of MCIMetro Access Transmission Services, Inc., for Arbitration Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with US West Communications, Inc. (consolidated).

Docket No. 96S-257T: In Re: The Investigation and Suspension of Tariff Sheets Filed by US West Communications, Inc., with Advice Letter No. 2608 Regarding Proposed Rate Changes.

Docket No. 98F-146T: Colorado Payphone Association, Complainant, v. US West Communications, Inc., Respondent.

Docket No. 02A-276T: In the Matter of the Application of Wiggins Telephone Association for Approval of its Disaggregation Plan

Docket No. 02A-444T: In the Matter of NECC's Application to Redefine the Service Area of Eastern Slope Rural Telephone Association, Inc., Great Plains Communications, Inc., Plains Coop Telephone Association, Inc., and Sunflower Telephone Co., Inc.

**State of Connecticut, Department of Utility Control**

Docket 91-12-19: DPUC Review of Intrastate Telecommunications Services Open to Competition (Comments).

Docket No. 94-07-02: Development of the Assumptions, Tests, Analysis, and Review to Govern Telecommunications Service Reclassifications in Light of the Eight Criteria Set Forth in Section 6 of Public Act 94-83 (Comments).

**Delaware Public Service Commission**

Docket No. 93-31T: In the Matter of the Application of The Diamond State Telephone Company for Establishment of Rules and Rates for the Provision of IntelliLinQ-PRI and IntelliLinQ-BRI.

Docket No. 41: In the Matter of the Development of Regulations for the Implementation of the Telecommunications Technology Investment Act.

Docket No. 96-324: In the Matter of the Application of Bell Atlantic-Delaware, Inc. for Approval of its Statement of Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996 (Phase II).

Docket No. 02-001: In the Matter of the Inquiry into Verizon Delaware Inc.'s Compliance with the Conditions Set Forth in 47 U.S.C. § 271(c).

**Florida Public Service Commission**

Docket No. 881257-TL: In Re: Proposed Tariff by Southern Bell to Introduce New Features for Digital ESSX Service, and to Provide Structural Changes for both ESSX Service and Digital ESSX Service.

Docket No. 880812-TP: In Re: Investigation into Equal Access Exchange Areas (EAEAs), Toll Monopoly Areas (TMAs), 1+ Restriction to the Local Exchange Companies (LECs), and Elimination of the Access Discount.

Docket No. 890183-TL: In Re: Generic Investigation into the Operations of Alternate Access Vendors.

Docket No. 870347-TI: In Re: Petition of AT&T Communications of the Southern States for Commission Forbearance from Earnings Regulation and Waiver of Rule 25-4.495(1) and 25-24.480 (1) (b), F.A.C., for a trial period.

Docket No. 900708-TL: In Re: Investigation of Methodology to Account for Access Charges in Local Exchange Company (LEC) Toll Pricing.

Docket No. 900633-TL: In Re: Development of Local Exchange Company Cost of Service Study Methodology.

Docket No. 910757-TP: In Re: Investigation into the Regulatory Safeguards Required to Prevent Cross-Subsidization by Telephone Companies.

Docket No. 920260-TL: In Re: Petition of Southern Bell Telephone and Telegraph Company for Rate Stabilization, Implementation Orders, and Other Relief.

Docket No. 950985-TP: In Re: Resolution of Petitions to establish 1995 rates, terms, and conditions for interconnection involving local exchange companies and alternative local exchange companies pursuant to Section 364.162, Florida Statutes.

Docket No. 960846-TP: In Re: Petition by MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. for Arbitration of Certain Terms and Conditions of a proposed agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996 and Docket No. 960833-TP: In Re: Petition by AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996 (consolidated).

Docket No. 960847-TP and 960980-TP: In Re: Petition by AT&T Communications of the Southern States,

## **Exhibit DJW-1**

Inc., MCI Telecommunications Corporation, MCI Metro Access Transmission Service, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE Florida Incorporated Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996 (consolidated).

Docket No. 961230-TP: In Re: Petition by MCI Telecommunications Corporation for Arbitration with United Telephone Company of Florida and Central Telephone Company of Florida Concerning Interconnection Rates, Terms, and Conditions, Pursuant to the Federal Telecommunications Act of 1996.

Docket No. 960786-TL: In Re: Consideration of BellSouth Telecommunications, Inc.'s Entry Into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996.

Docket Nos. 960833-TP, 960846-TP, 960757-TP, and 971140-TP: Investigation to develop permanent rates for certain unbundled network elements.

Docket No. 980696-TP: In Re: Determination of the cost of basic local telecommunications service, pursuant to Section 364.025 Florida Statutes.

Docket No. 990750-TP: Petition by ITC^DeltaCom Communications, Inc., d/b/a/ ITC^DeltaCom, for arbitration of certain unresolved issues in interconnection negotiations between ITC^DeltaCom and BellSouth Telecommunications, Inc.

Docket No. 991605-TP: Petition of BellSouth Telecommunications, Inc. for Arbitration of the Interconnection Agreement Between Time Warner Telecom of Florida, L.P., pursuant to Section 252 (b) of the Telecommunications Act of 1996.

Docket No. 030137-TP: In re: Petition for Arbitration of Unresolved Issues in Negotiation of Interconnection Agreement with BellSouth Telecommunications, Inc. by ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom.

### **Georgia Public Service Commission**

Docket No. 3882-U: In Re: Investigation into Incentive Telephone Regulation in Georgia.

Docket No. 3883-U: In Re: Investigation into the Level and Structure of Intrastate Access Charges.

Docket No. 3921-U: In Re: Compliance and Implementation of Senate Bill 524.

Docket No. 3905-U: In Re: Southern Bell Rule Nisi.

Docket No. 3995-U: In Re: IntraLATA Toll Competition.

Docket No. 4018-U: In Re: Review of Open Network Architecture (ONA) (Comments).

Docket No. 5258-U: In Re: Petition of BellSouth Telecommunications for Consideration and Approval of its "Georgians FIRST" (Price Caps) Proposal.

Docket No. 5825-U: In Re: The Creation of a Universal Access Fund as Required by the Telecommunications Competition and Development Act of 1995.

Docket No. 6801-U: In Re: Interconnection Negotiations Between BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, Inc., Pursuant to Sections 251-252 and 271 of the Telecommunications Act of 1996.

Docket No. 6865-U: In Re: Petition by MCI for Arbitration of Certain Terms and Conditions of Proposed

## **Exhibit DJW-1**

Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

Docket No. 7253-U: In Re: BellSouth Telecommunications, Inc.'s Statement of Generally Available Terms and Conditions Under Section 252 (f) of the Telecommunications Act of 1996.

Docket No. 7061-U: In Re: Review of Cost Studies and Methodologies for Interconnection and Unbundling of BellSouth Telecommunications Services.

Docket No. 10692-U: In Re: Generic Proceeding to Establish Long-Term Pricing Policies for Unbundled Network Elements.

Docket No. 10854-U: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. 16583-U: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

### **Public Utilities Commission of Hawaii**

Docket No. 7702: In the Matter of Instituting a Proceeding on Communications, Including an Investigation of the Communications Infrastructure of the State of Hawaii.

### **Indiana Utility Regulatory Commission**

Cause No. 42303: In the Matter of the Complaint of the Indiana Payphone Association for a Commission Determination of Just and Reasonable Rates and Charges and Compliance with Federal Regulations.

Cause No. 41052-ETC-43: In the Matter of the Designation of Eligible Telecommunications Carriers by the Indiana Utility Regulatory Commission Pursuant to the Telecommunications Act of 1996 and Related FCC Orders. In Particular, the Application of NPCR, Inc. d/b/a Nextel Partners to be Designated.

### **Iowa Utilities Board**

Docket No. RPU-95-10.

Docket No. RPU-95-11.

### **State Corporation Commission of the State of Kansas**

Docket No. 00-GIMT-1054-GIT: In the Matter of a General Investigation to Determine Whether Reciprocal Compensation Should Be Paid for Traffic to an Internet Service Provider.

### **Kentucky Public Service Commission**

Administrative Case No. 10321: In the Matter of the Tariff Filing of South Central Bell Telephone Company to Establish and Offer Pulselink Service.

Administrative Case No. 323: In the Matter of An Inquiry into IntraLATA Toll Competition, An Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and

WATS Jurisdictionality.

- Phase IA: Determination of whether intraLATA toll competition is in the public interest.
- Phase IB: Determination of a method of implementing intraLATA competition.
- Rehearing on issue of Imputation.

Administrative Case No. 90-256, Phase II: In the Matter of A Review of the Rates and Charges and Incentive Regulation Plan of South Central Bell Telephone Company.

Administrative Case No. 336: In the Matter of an Investigation into the Elimination of Switched Access Service Discounts and Adoption of Time of Day Switch Access Service Rates.

Administrative Case No. 91-250: In the Matter of South Central Bell Telephone Company's Proposed Area Calling Service Tariff.

Administrative Case No. 96-431: In Re: Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

Administrative Case No. 96-478: In Re: The Petition by AT&T Communications of the South Central States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South Incorporated Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

Administrative Case No. 96-482: In Re: The Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Administrative Case No. 360: In the Matter of: An Inquiry into Universal Service and Funding Issues.

Administrative Case No. 96-608: In the Matter of: Investigation Concerning the Provision of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Administrative Case No. 382: An Inquiry into the Development of Deaveraged Rates for Unbundled Network Elements.

#### **Louisiana Public Service Commission**

Docket No. 17970: In Re: Investigation of the Revenue Requirements, Rate Structures, Charges, Services, Rate of Return, and Construction Program of AT&T Communications of the South Central States, Inc., in its Louisiana Operations.

Docket No. U-17949: In the Matter of an Investigation of the Revenue Requirements, Rate Structures, Charges, Services, Rate of Return, and Construction Program of South Central Bell Telephone Company, Its Louisiana Intrastate Operations, The Appropriate Level of Access Charges, and All Matters Relevant to the Rates and Service Rendered by the Company.

- Subdocket A (SCB Earnings Phase)
- Subdocket B (Generic Competition Phase)

Docket No. 18913-U: In Re: South Central Bell's Request for Approval of Tariff Revisions to Restructure

ESSX and Digital ESSX Service.

Docket No. U-18851: In Re: Petition for Elimination of Disparity in Access Tariff Rates.

Docket No. U-22022: In Re: Review and Consideration of BellSouth Telecommunications, Inc.'s TSLRIC and LRIC Cost Studies Submitted Pursuant to Sections 901(C) and 1001(E) of the Regulations for Competition in the Local Telecommunications Market as Adopted by General Order Dated March 15, 1996 in Order to Determine the Cost of Interconnection Services and Unbundled Network Components to Establish Reasonable, Non-Discriminatory, Cost Based Tariffed Rates and Docket No. U-22093: In Re: Review and Consideration of BellSouth Telecommunications, Inc.'s Tariff Filing of April 1, 1996, Filed Pursuant to Section 901 and 1001 of the Regulations for Competition in the Local Telecommunications Market Which Tariff Introduces Interconnection and Unbundled Services and Establishes the Rates, Terms and Conditions for Such Service Offerings (consolidated).

Docket No. U-22145: In the Matter of Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. U-22252: In Re: Consideration and Review of BST's Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, including but not limited to the fourteen requirements set forth in Section 271 (c) (2) (b) in order to verify compliance with section 271 and provide a recommendation to the FCC regarding BST's application to provide interLATA services originating in-region.

Docket No. U-20883 Subdocket A: In Re: Submission of the Louisiana Public Service Commission's Forward Looking Cost Study to the FCC for Purposes of Calculating Federal Universal Service Support.

Docket No. U-24206: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. U-22632: In Re: BellSouth Telecommunications, Inc. Filing of New Cost Studies for Providing Access Line Service for Customer Provided Public Telephones and Smartline Service for Public Telephone Access.

Docket No. Docket No. U-24714-A: In Re: Final Deaveraging of BellSouth Telecommunications, Inc. UNE Rates Pursuant to FCC 96-45 Ninth Report and Order and Order on Eighteenth Order on Reconsideration Released November 2, 1999.

#### **Public Service Commission of Maryland**

Case 8584, Phase II: In the Matter of the Application of MFS Intelenet of Maryland, Inc. for Authority to Provide and Resell Local Exchange and Intrastate Telecommunications Services in Areas Served by C&P Telephone Company of Maryland.

Case 8715: In the Matter of the Inquiry into Alternative Forms of Regulating Telephone Companies.

Case 8731: In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996.

#### **Massachusetts Department of Telecommunications and Energy**

D.P.U./D.T.E. 97088/97-18 (Phase II): Investigation by the Department of Telecommunications & Energy on its own motion regarding (1) implementation of section 276 of the Telecommunications Act of 1996 relative to public interest payphones, (2) Entry and Exit Barriers for the Payphone Marketplace, (3) New

England Telephone and Telegraph Company d/b/a NYNEX's Public Access Smart-Pay Service, and (4) the rate policy for operator service providers.

**Minnesota Public Utilities Commission**

PUC Docket No. PT6153/AM-02-686, OAH Docket No. 3-2500-14980-2: In the Matter of Petition of Midwest Wireless Communications, LLC for Designation as an Eligible Communications carrier under 47 U.S.C. § 214(e)(2).

PUC Docket No. PT-6182, 6181/M-02-1503: In the Matter of RCC Minnesota, Inc. and Wireless Alliance, LLC for Designation as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2).

**Mississippi Public Service Commission**

Docket No. U-5086: In Re: MCI Telecommunications Corporation's Metered Use Service Option D (Prism I) and Option E (Prism II).

Docket No. U-5112: In Re: MCI Telecommunications Corporation's Metered Use Option H (800 Service).

Docket No. U-5318: In Re: Petition of MCI for Approval of MCI's Provision of Service to a Specific Commercial Banking Customers for Intrastate Interexchange Telecommunications Service.

Docket 89-UN-5453: In Re: Notice and Application of South Central Bell Telephone Company for Adoption and Implementation of a Rate Stabilization Plan for its Mississippi Operations.

Docket No. 90-UA-0280: In Re: Order of the Mississippi Public Service Commission Initiating Hearings Concerning (1) IntraLATA Competition in the Telecommunications Industry and (2) Payment of Compensation by Interexchange Carriers and Resellers to Local Exchange Companies in Addition to Access Charges.

Docket No. 92-UA-0227: In Re: Order Implementing IntraLATA Competition.

Docket No. 96-AD-0559: In Re: In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. 98-AD-035: Universal Service.

Docket No. 97-AD-544: In Re: Generic Proceeding to Establish Permanent Prices for BellSouth Interconnection and Unbundled Network Elements.

**Public Service Commission of the State of Montana**

Docket No. D2000.8.124: In the Matter of Touch America, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 of the Terms and Conditions of Interconnection with Qwest Corporation, f/k/a US West Communications, Inc.

Docket No. D2000.6.89: In the Matter of Qwest Corporation's Application to Establish Rates for Interconnection, Unbundled Network Elements, Transport and Termination, and Resale Services.

**Nebraska Public Service Commission**

Docket No. C-1385: In the Matter of a Petition for Arbitration of an Interconnection Agreement Between AT&T Communications of the Midwest, Inc., and US West Communications, Inc.

**New York Public Service Commission**

Case No. 28425: Proceeding on Motion of the Commission as to the Impact of the Modification of Final Judgement and the Federal Communications Commission's Docket 78-72 on the Provision of Toll Service in New York State.

**North Carolina Public Utilities Commission**

Docket No. P-100, Sub 72: In the Matter of the Petition of AT&T to Amend Commission Rules Governing Regulation of Interexchange Carriers (Comments).

Docket No. P-141, Sub 19: In the Matter of the Application of MCI Telecommunications Corporation to Provide InterLATA Facilities-Based Telecommunications Services (Comments).

Docket No. P-55, Sub 1013: In the Matter of Application of BellSouth Telecommunications, Inc. for, and Election of, Price Regulation.

Docket Nos. P-7, Sub 825 and P-10, Sub 479: In the Matter of Petition of Carolina Telephone and Telegraph and Central Telephone Company for Approval of a Price Regulation Plan Pursuant to G.S. 62-133.5.

Docket No. P-19, Sub 277: In the Matter of Application of GTE South Incorporated for and Election of, Price Regulation.

Docket No. P-141, Sub 29: In the Matter of: Petition of MCI Telecommunications Corporation for Arbitration of Interconnection with BellSouth Telecommunications, Inc., Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Interconnection with BellSouth Telecommunications, Inc. (consolidated).

Docket No. P-141, Sub 30: In the Matter of: Petition of MCI Telecommunications Corporation for Arbitration of Interconnection with General Telephone Company of North Carolina, Inc., Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Interconnection with General Telephone Company of North Carolina, Inc. (consolidated).

Docket No. P-100, Sub 133b: Re: In the Matter of Establishment of Universal Support Mechanisms Pursuant to Section 254 of the Telecommunications Act of 1996.

Docket No. P-100, Sub 133d: Re: Proceeding to Determine Permanent Pricing for Unbundled Network Elements.

Docket No. P-100, Sub 84b: Re: In the Matter of Petition of North Carolina Payphone Association for Review of Local Exchange Company Tariffs for Basic Payphone Services (Comments).

Docket No. P-561, Sub 10: BellSouth Telecommunications, Inc., Complainant, v. US LEC of North Carolina, LLC, and Metacomm, LLC, Respondents.

Docket No. P-472, Sub 15: In the Matter of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Time Warner Telecom of North Carolina, L.P. Pursuant to Section 252(b) of the Telecommunications Act of 1996.

Docket Nos. P-7, Sub 995; P-10, Sub 633: ALEC., Inc. v. Carolina Telephone and Telegraph Company and Central Telephone Company.

Docket No. P-500, Sub 18: In the Matter of: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

**Public Utilities Commission of Ohio**

Case No. 93-487-TP-ALT: In the Matter of the Application of The Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation.

**Oklahoma Corporation Commission**

Cause No. PUD 01448: In the Matter of the Application for an Order Limiting Collocation for Special Access to Virtual or Physical Collocation at the Option of the Local Exchange Carrier.

Cause No. PUD 200300195: Application of United States Cellular Corporation for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996.

Cause No. PUD 200300239: Application of Dobson Cellular Systems, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996.

**Public Utility Commission of Oregon**

Docket No. UT 119: In the Matter of an Investigation into Tariffs Filed by US West Communications, Inc., United Telephone of the Northwest, Pacific Telecom, Inc., and GTE Northwest, Inc. in Accordance with ORS 759.185(4).

Docket No. ARB 3: In the Matter of the Petition of AT&T Communications of the Pacific Northwest, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996. Docket No. ARB 6: In the Matter of the Petition of MCIMetro Access Transmission Services, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 (consolidated).

Docket No. ARB 9: In the Matter of the Petition of an Interconnection Agreement Between MCIMetro Access Transportation Services, Inc. and GTE Northwest Incorporated, Pursuant to 47 U.S.C. Section 252.

Docket No. UT-125: In the Matter of the Application of US West Communications, Inc. for an Increase in Revenues.

**Pennsylvania Public Utilities Commission**

Docket No. I-00910010: In Re: Generic Investigation into the Current Provision of InterLATA Toll Service.

Docket No. P-00930715: In Re: The Bell Telephone Company of Pennsylvania's Petition and Plan for Alternative Form of Regulation under Chapter 30.

Docket No. R-00943008: In Re: Pennsylvania Public Utility Commission v. Bell Atlantic-Pennsylvania, Inc. (Investigation of Proposed Promotional Offerings Tariff).

Docket No. M-00940587: In Re: Investigation pursuant to Section 3005 of the Public Utility Code, 66 Pa. C. S. §3005, and the Commission's Opinion and Order at Docket No. P-930715, to establish standards and safeguards for competitive services, with particular emphasis in the areas of cost allocations, cost studies, unbundling, and imputation, and to consider generic issues for future rulemaking.

**South Carolina Public Service Commission**

Docket No. 90-626-C: In Re: Generic Proceeding to Consider Intrastate Incentive Regulation.

Docket No. 90-321-C: In Re: Petition of Southern Bell Telephone and Telegraph Company for Revisions to its Access Service Tariff Nos. E2 and E16.

Docket No. 88-472-C: In Re: Petition of AT&T of the Southern States, Inc., Requesting the Commission to Initiate an Investigation Concerning the Level and Structure of Intrastate Carrier Common Line (CCL) Access Charges.

Docket No. 92-163-C: In Re: Position of Certain Participating South Carolina Local Exchange Companies for Approval of an Expanded Area Calling (EAC) Plan.

Docket No. 92-182-C: In Re: Application of MCI Telecommunications Corporation, AT&T Communications of the Southern States, Inc., and Sprint Communications Company, L.P., to Provide IntraLATA Telecommunications Services.

Docket No. 95-720-C: In Re: Application of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company for Approval of an Alternative Regulation Plan.

Docket No. 96-358-C: In Re: Interconnection Agreement Negotiations Between AT&T Communications of the Southern States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. 96-375-C: In Re: Interconnection Agreement Negotiations Between AT&T Communications of the Southern States, Inc. and GTE South Incorporated Pursuant to 47 U.S.C. § 252.

Docket No. 97-101-C: In Re: Entry of BellSouth Telecommunications, Inc. into the InterLATA Toll Market.

Docket No. 97-374-C: In Re: Proceeding to Review BellSouth Telecommunications, Inc. Cost for Unbundled Network Elements.

Docket No. 97-239-C: Intrastate Universal Service Fund.

Docket No. 97-124-C: BellSouth Telecommunications, Inc. Revisions to its General Subscriber Services Tariff and Access Service Tariff to Comply with the FCC's Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996.

Docket No. 1999-268-C: Petition of Myrtle Beach Telephone, LLC, for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Horry Telephone Cooperative, Inc.

Docket No. 1999-259-C: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. 2001-65-C: Generic Proceeding to Establish Prices for BellSouth's Interconnection Services, Unbundled Network Elements and Other Related Elements and Services.

**Tennessee Public Service Commission**

Docket No. 90-05953: In Re: Earnings Investigation of South Central Bell Telephone Company.

Docket Nos. 89-11065, 89-11735, 89-12677: AT&T Communications of the South Central States, MCI Telecommunications Corporation, US Sprint Communications Company -- Application for Limited IntraLATA Telecommunications Certificate of Public Convenience and Necessity.

Docket No. 91-07501: South Central Bell Telephone Company's Application to Reflect Changes in its Switched Access Service Tariff to Limit Use of the 700 Access Code.

**Tennessee Regulatory Authority**

Docket No. 96-01152: In Re: Petition by AT&T Communications of the South Central States, Inc. for Arbitration under the Telecommunications Act of 1996 and Docket No. 96-01271: In Re: Petition by MCI Telecommunications Corporation for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996 (consolidated).

Docket No. 96-01262: In Re: Interconnection Agreement Negotiations Between AT&T of the South Central States, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. § 252.

Docket No. 97-01262: Proceeding to Establish Permanent Prices for Interconnection and Unbundled Network Elements.

Docket No. 97-00888: Universal Service Generic Contested Case.

Docket No. 99-00430: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996.

Docket No. 97-00409: In Re: All Telephone Companies Tariff Filings Regarding Reclassification of Pay Telephone Service as Required by Federal Communications Commission Docket No. 96-128.

Docket No. 03-00119: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc.

**Public Utility Commission of Texas**

Docket No. 12879: Application of Southwestern Bell Telephone Company for Expanded Interconnection for Special Access Services and Switched Transport Services and Unbundling of Special Access DS1 and DS3 Services Pursuant to P. U. C. Subst. R. 23.26.

Docket No. 18082: Complaint of Time Warner Communications against Southwestern Bell Telephone Company.

Docket No. 21982: Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996.

Docket No. 23396: Joint Petition of CoServ, LLC d/b/a CoServ Communications and Multitechnology Services, LP d/b/a CoServ Broadband Services for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with Southwestern Bell Telephone Company.

## **Exhibit DJW-1**

Docket No. 24015: Consolidated Complaints and Requests of Post-Interconnection Dispute Resolution Regarding Inter-Carrier Compensation for FX-Type Traffic Against Southwestern Bell Telephone Company.

PUC Docket No. 27709: Application of NPCR, Inc., dba Nextel Partners for Eligible Telecommunications Carrier Designation (ETC).

### **State of Vermont Public Service Board**

Docket No. 6533: Application of Verizon New England Inc. d/b/a Verizon Vermont for a Favorable Recommendation to Offer InterLATA Services Under 47 U.S.C. 271.

### **Virginia State Corporation Commission**

Case No. PUC920043: Application of Virginia Metrotel, Inc. for a Certificate of Public Convenience and Necessity to Provide InterLATA Interexchange Telecommunications Services.

Case No. PUC920029: Ex Parte: In the Matter of Evaluating the Experimental Plan for Alternative Regulation of Virginia Telephone Companies.

Case No. PUC930035: Application of Contel of Virginia, Inc. d/b/a GTE Virginia to implement community calling plans in various GTE Virginia exchanges within the Richmond and Lynchburg LATAs.

Case No. PUC930036: Ex Parte: In the Matter of Investigating Telephone Regulatory Methods Pursuant to Virginia Code § 56-235.5, & Etc.

### **Washington Utilities and Transportation Commission**

Docket Nos. UT-941464, UT-941465, UT-950146, and UT-950265 (Consolidated): Washington Utilities and Transportation Commission, Complainant, vs. US West Communications, Inc., Respondent; TCG Seattle and Digital Direct of Seattle, Inc., Complainant, vs. US West Communications, Inc., Respondent; TCG Seattle, Complainant, vs. GTE Northwest Inc., Respondent; Electric Lightwave, Inc., vs. GTE Northwest, Inc., Respondent.

Docket No. UT-950200: In the Matter of the Request of US West Communications, Inc. for an Increase in its Rates and Charges.

Docket No. UT-000883: In the Matter of the Petition of U S West Communications, Inc. for Competitive Classification.

### **Public Service Commission of West Virginia**

Case No. 02-1453-T-PC: Highland Cellular, Inc. Petition for consent and approval to be designated as an eligible telecommunications carrier in the areas served by Citizens Telecommunications Company of West Virginia.

### **Public Service Commission of Wyoming**

Docket No. 70000-TR-95-238: In the Matter of the General Rate/Price Case Application of US West

Communications, Inc. (Phase I).

Docket No. PSC-96-32: In the Matter of Proposed Rule Regarding Total Service Long Run Incremental Cost (TSLRIC) Studies.

Docket No. 70000-TR-98-420: In the Matter of the Application of US West Communications, Inc. for authority to implement price ceilings in conjunction with its proposed Wyoming Price Regulation Plan for essential and noncompetitive telecommunications services (Phase III).

Docket No. 70000-TR-99-480: In the Matter of the Application of US West Communications, Inc. for authority to implement price ceilings in conjunction with its proposed Wyoming Price Regulation Plan for essential and noncompetitive telecommunications services (Phase IV).

Docket No. 70000-TR-00-556: In the Matter of the Filing by US West Communications, Inc. for Authority to File its TSLRIC 2000 Annual Input Filing and Docket No. 70000-TR-00-570: In the Matter of the Application of US West Communications, Inc. for Authority to File its 2000 Annual TSLRIC Study Filing.

**Public Service Commission of the District of Columbia**

Formal Case No. 814, Phase IV: In the Matter of the Investigation into the Impact of the AT&T Divestiture and Decisions of the Federal Communications Commission on Bell Atlantic - Washington, D. C. Inc.'s Jurisdictional Rates.

**Puerto Rico Telecommunications Regulatory Board**

Case No. 98-Q-0001: In Re: Payphone Tariffs.

Docket No.: JRT-2001-AR-0002: In the Matter of Interconnection Rates, Terms and Conditions between WorldNet Telecommunications, Inc. and Puerto Rico Telephone Company.

**COMMENTS/DECLARATIONS - FEDERAL COMMUNICATIONS COMMISSION**

CC Docket No. 92-91: In the Matter of Open Network Architecture Tariffs of Bell Operating Companies.

CC Docket No. 93-162: Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access.

CC Docket No. 91-141: Common Carrier Bureau Inquiry into Local Exchange Company Term and Volume Discount Plans for Special Access.

CC Docket No. 94-97: Review of Virtual Expanded Interconnection Service Tariffs.

CC Docket No. 94-128: Open Network Architecture Tariffs of US West Communications, Inc.

CC Docket No. 94-97, Phase II: Investigation of Cost Issues, Virtual Expanded Interconnection Service Tariffs.

CC Docket No. 96-98: In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

CC Docket No. 97-231: Application by BellSouth to Provide In-Region InterLATA Services

CC Docket No. 98-121: Application by BellSouth to Provide In-Region InterLATA Services

CCB/CPD No. 99-27: In the Matter of Petition of North Carolina Payphone Association for Expedited Review of, and/or Declaratory Ruling Concerning, Local Exchange Company Tariffs for Basic Payphone Services.

CC Docket No. 96-128: In the Matter of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CCB/CPD No. 99-31: Oklahoma Independent Telephone Companies Petition for Declaratory Ruling (consolidated).

CCB/CPD No. 00-1: In the Matter of the Wisconsin Public Service Commission Order Directing Filings.

CC Docket No. 99-68: In the Matter of Inter-Carrier Compensation for ISP-Bound Traffic

File No. EB-01-MD-020: In the Matter of Sprint Communications Company, L.P., Complainant v. Time Warner Telecom, Inc. Defendant.

Request by the American Public Communications Council that the Commission Issue a Notice of Proposed Rulemaking to Update the Dial-Around Compensation Rate

File Nos. EB-02-MD-018-030: In the Matter of Communications Vending Corp. of Arizona, et. al., Complainants, v. Citizens Communications Co. f/k/a Citizens Utilities Co. and Citizens Telecommunications Co., et. al., Defendants.

CC Docket No. 96-45: In the Matter of Federal-State Joint Board on Universal Service, Cellular South License, Inc., RCC Holdings, Inc., Petitions for designation as an Eligible Telecommunications Carrier in the State of Alabama.

CC Docket No. 96-45: In the Matter of Federal-State Joint Board on Universal Service, Declaration in Support of the Comments to the Federal-State Joint Board of the Rural Cellular Association and the Alliance of Rural CMRS Carriers.

**REPRESENTATIVE TESTIMONY – STATE, FEDERAL, AND OVERSEAS COURTS**

**Court of Common Pleas, Philadelphia County, Pennsylvania**

Shared Communications Services of 1800-80 JFK Boulevard, Inc., Plaintiff, v. Bell Atlantic Properties, Inc., Defendant.

**Texas State Office of Administrative Hearings**

Office of Customer Protection (OCP) Investigation of Axces, Inc. for Continuing Violations of PUC Substantive Rule §26.130, Selection of Telecommunications Utilities, Pursuant to Procedural Rules 22.246 Administrative Penalties.

**Superior Court for the State of Alaska, First Judicial District**

Richard R. Watson, David K. Brown and Ketchikan Internet Services, a partnership of Richard R. Watson and David K. Brown, plaintiffs, v. Karl Amylon and the City of Ketchikan, Defendants.

**United States District Court for the District of South Carolina, Columbia Division**

Brian Wesley Jeffcoat, on behalf of himself and others similarly situated, Plaintiffs, v. Time Warner Entertainment - Advance/Newhouse Partnership, Defendant.

**United States District Court for the Northern District of Texas, Fort Worth Division**

Multitechnology Services, L. P. d/b/a CoServ Broadband Services, Plaintiffs, v. Southwestern Bell Telephone Company, Defendant.

Multitechnology Services, L. P. d/b/a CoServ Broadband Services, Plaintiffs, v. Verizon Southwest f/k/a GTE Southwest Incorporated.

**High Court of the Hong Kong Special Administrative Region, Court of First Instance**

Commercial List No. 229 of 1999: Cable and Wireless HKT International Limited, Plaintiff v. New World Telephone Limited, Defendant.

**REPRESENTATIVE TESTIMONY – PRIVATE COMMERCIAL ARBITRATION TRIBUNALS**

**American Arbitration Association**

Southwestern Bell Telephone Company, Claimant vs. Time Warner Telecom, Respondent.

**CPR Institute for Dispute Resolution**

Supra Telecommunications and Information Systems, Inc., Claimant vs. BellSouth Telecommunications, Inc., Respondent.